87- 520



No.

# In The

# Supreme Court Of The United States

---

OCTOBER TERM, 1987

---

**GAIL HANCICH,**
*Petitioner,*

v.

**MICHAEL GOPOIAN, ET AL,**
*Respondents.*

---

## PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES

---

F. WOODWARD LEWIS, JR., ESQ.
[redacted]
439 Main Street
Wallingford, Connecticut 06492
Telephone: 203-265-2829

*Attorney for the Petitioner*

Printed by
Brescia's Printing Services, Inc.
66 Connecticut Boulevard
East Hartford, CT 06108
528-4254

## QUESTIONS PRESENTED FOR REVIEW

I. Whether or not the United States Court of Appeals for the Second Circuit erred in affirming the dismissal of appellant Gail Hancich's complaint for failure to state a claim upon which relief could be granted as entered in the judgment of the United States District Court for the District of Connecticut because "state action" does exist in the (1) Connecticut statutory court-ordered eviction and (2) monopoly power created by zoning regulations.

II. Whether or not the United States Court of Appeals for the Second Circuit erred in affirming the dismissal of appellant Gail Hancich's complaint for failure to state a claim upon which relief could be granted as entered in the judgment of the United States District Court for the District of Connecticut because the State of Connecticut has authorized summary process eviction and monopoly power created by zoning regulations to mobile home park owners which in confluence constitute a taking of the constitutionally protected property interest in appellant Gail Hancich's mobile home.

III. Whether or not the United States Court of Appeals for the Second Circuit erred in concluding that it would be premature to presume that appellant Gail Hancich will be deprived of the benefit of C.G.S. § 21-79 (see Appendix X) because Gail Hancich is no longer a mobile home resident under statutory and case law definition.

## TABLE OF CONTENTS

TABLE OF CONTENTS (continued)

## TABLE OF AUTHORITIES

## TABLE OF AUTHORITIES (continued)

**Cases:** **Page(s)**

## TABLE OF AUTHORITIES (continued)

## TABLE OF AUTHORITIES (continued)

# In The
# Supreme Court Of The United States

OCTOBER TERM, 1987

GAIL HANCICH,
*Petitioner,*

v.

MICHAEL GOPOIAN, ET AL,
*Respondents.*

## PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES COURT OF APPEALS SECOND CIRCUIT

The petitioner, Gail Hancich, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals Second Circuit entered on April 8, 1987.

## OPINION BELOW

The United States Court of Appeals, Second Circuit entered its Memorandum Decision affirming respondent Gopoian's motion to dismiss petitioner Hancich's section 1983 complaint for failure to state a claim. A copy of the memorandum opinion is attached as Appendix I.

## JURISDICTION

The judgment of the United States District Court for the District of Connecticut was entered on May 29, 1986. The judgment of the United States Court of Appeals for the Second Circuit was entered on April 8, 1987. The jurisdiction of this court is invoked under the Fifth and Fourteenth Amendment to the Constitution and 42 U.S.C. § 1983.

## CONSTITUTIONAL PROVISIONS INVOLVED

### UNITED STATES CONSTITUTION, AMENDMENT V

Nor shall any person . . . be deprived of life, liberty or property without due process of law.

### UNITED STATES CONSTITUTION, AMENDMENT XIV

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States nor shall any state deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

## STATEMENT OF THE CASE

In the spring of 1982, Gail Hancich, a widow with three children, purchased a mobile home for $32,693.50 and entered into an oral month-to-month agreement with Respondents, to lease Lot 76 in Gopoians Mobile Home Park in Wallingford. She purchased her mobile home with a mortgage, and took possession, but was interrupted almost immediately when the adjacent Quinnipiac River overflowed, flooding the park, dislocating and damaging her home and rendering the entire park uninhabitable for one-and-a-half months, forcing Mrs. Hancich and all of the other tenants out. It took her an additional month to secure State emergency help, whereupon she tendered the two-and-one-half months back rent.

Respondents elected to refuse her tender of back rent and instead served her with a notice to quit and a notice of eviction based on failure to pay rent while her home was uninhabitable. Subsequently, Respondents commenced a summary eviction proceeding in State Housing Court. Appellant immediately brought action in Federal District Court in Bridgeport to block the state court action, contending that the use of the summary eviction proceeding will result in the loss of her equity in the mobile home without fair notice and opportunity to be heard in violation of the Due Process Clause of the Fourteenth Amendment because although she paid $32,693.50 for the mobile home on the lot, it would only be worth $15,000.00 after the mobile home was evicted off the lot, leaving Mrs. Hancich with a net loss of $17,000.00. The state court granted a stay of their proceeding to allow the Federal action on condition that Mrs. Hancich make timely use and occupancy payments. The U.S. District Court, for the District of Connecticut granted Respondent's motion to dismiss her action for failure to state a claim, holding that Appellant had failed to show that her constitutionally protected rights had been infringed by a person whose actions could fairly be attributed to the state. Subsequently, the United States Court of Appeals for the Second Circuit affirmed the judgment of the District Court.

## REASONS FOR GRANTING THE WRIT

### I. THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT ERRED IN AFFIRMING THE DISMISSAL OF APPELLANT GAIL HANCICH'S COMPLAINT FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF COULD BE GRANTED AS ENTERED IN THE JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT BECAUSE "STATE ACTION" DOES EXIST IN THE (1) CONNECTICUT STATUTORY COURT-ORDERED EVICTION AND (2) MONOPOLY POWER CREATED BY ZONING REGULATIONS.

"A complaint should not be dismissed for failure to state a claim [under Fed. R. Civ. P. 12(b)6] unless it appears beyond doubt that the plaintiff can prove no set of facts of [her] claim to relief." *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957). Furthermore, the allegations must be construed in favor of the plaintiff, *Scheurer v. Rhodes*, 416 U.S. 232, 236 (1974); and the plaintiff must meet the prerequisites of (1) conduct attributable to the state and of (2) deprivation of a constitutionally protected right caused by this state conduct, *Dahlberg v. Becker*, 748 F.2d 85, 89 (2d Cir. 1984).

Beyond a doubt and with favored construction by the courts as mandated by *Conley* and *Dahlberg*, Gail Hancich has made a prima facie claim for relief sufficient to be supported with evidence at trial. The judgment of the United States Court of Appeals for the Second Circuit should be reversed.

**A. Although C.G.S. § 47a-23 to 41a (see Appendix IV) ("summary process statute") is neutral on its face as to the constitutionality of the law enforced, this neutrality is inapposite because (1) the State of Connecticut gives special support to mobile home park owners and (2) permits the Town of Wallingford to markedly restrict alternatives to dominion for the mobile home owner.**

State action is the jurisdictional cornerstone to grant relief under the Fourteenth Amendment or 42 U.S.C. Sect. 1983. There exists no practical distinction between what constitutes "state action" for purposes of the Fourteenth Amendment and what is required to fulfill "under color of state law provisions of the Civil Rights Act of 1871." Black's Law Dictionary 1262 (5th ed. 1979), citing *Weiss v. J.C. Penney Co., Inc.*, 414 F.Supp. 52, 54 (D.C. Ill.) *See Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 102 S.Ct. 2744 (1982) (requirement of § 1983 for under color of state law identical to state action requirement of Fourteenth Amendment). Gail Hancich enjoys the fundamental right to fairness in procedures regarding government deprivation of property. See *Santosky v. Kramer*, 455 U.S. 743, 102 S.Ct. 1388 (1982), *Youngberg v. Romeo*, 457 U.S. 307, 102 S.Ct. 2452 (1982). Gail Hancich's right to fairness is worthy of strict judicial scrutiny.

State action exists when ". . . a state in applying its law is 'privy to a [private party] discriminatory purposes.' " *Lavoie v. Bitgood*, 457 F.2d 7, 11 (1st Cir. 1972). See *Griffin v. Maryland*, 375 U.S. 130, 84 S.Ct. 1770 (1964) (state arrest and prosecution of blacks using privately owned park open to the public); *Shelley v. Kraemer*, 334 U.S. 1, 68 S.Ct. 836 (1948) (state court enforcement of a racially restrictive covenant). In *Lavoie v. Bitgood*, the Court of Appeals held that the State of New Hampshire was sufficiently involved in a retaliatory eviction action against a mobile park home tenant because the Town of Merrimack's zoning (restricting sites for mobile homes) created a private monopoly in the landlord. *Supra.* The complainant Robert Lavoie, an active member of a tenant's association, claimed that the summary process eviction under

N.H.R.S.A. c. 540 § 2, 12, 14 was sought in retaliation for the exercise of his rights of free speech and association. 457 F.2d at 9.

The *Lavoie* court relied on the "neutrality" analysis of *Griffin v. Maryland,* 378 U.S. 136–137, 84 S.Ct. at 1773 (1964) and of *Shelley v. Kraemer,* 334 U.S. 1, 68 S.Ct. 836 (1948). The essential ingredient of neutrality for a state involves the notice of a discriminatory classification. *Id.* A state is no longer neutral when in resorting to a state action as the eviction process in *Lavoie,* a party makes the state through divulgement of facts a privy to the discriminatory process. *Lavoie* at 11.

The State of Connecticut ". . . has made it a condition of living in a mobile home . . . that the [P]laintiff [Gail Hancich] locate [her] mobile home in [D]efendant [Gopoian]'s mobile home park." *Lavoie* at 13. The State of Connecticut through its instrumentality, the Town of Wallingford, has restricted by omission in its zoning regulations and has, thereby, placed monopoly power in private mobile home park owners' hands. "Much as federal legislation supporting a private agreement made it a condition of employment with a particular employer to join a certain union [*Railway Employees' Dept. v. Hanson,* 351 U.S. 225, 232, 76 S.Ct. 714, 718 (1956)], and the Wisconsin rule [in *Lanthrop v. Donahue,* 367 U.S. 820, 81 S.Ct. 1826 (1961)] made it a condition of practicing law in that state that a lawyer join the integrated bar association, Merrimack [in *Lavoie* and Wallingford in the instant case] has . . . made it a condition of living in a mobile home that the plaintiff(s) locate [his or her] mobile home in defendants' mobile home park." *Lavoie* at 13.

**B. The Wallingford zoning regulations authorized by the State of Connecticut under C.G.S. § 8-2 (see Appendix V) maintain a discriminatory purpose alien to the welfare of the mobile home owner, and mirror the increasing lack of concern for the mobile home owner in Connecticut and in the rest of the nation.**

Due to the on-face neutrality of C.G.S. § 47a-23a to 41a (see Appendix IV) regarding court-ordered eviction and the monopoly power created by zoning, ". . . it is unclear whether [the courts] ought to measure the voltage as if the actions [summary process eviction and zoning created monopoly power] were in a series or as if in parallel." *Lavoie v. Bitgood*, 457 F.2d at 10. The court in *Lavoie* chose a median line between the two following "polar propositions" that under the Fourteenth Amendment: (1) ". . . a state may not deprive a person of his constitutional rights; and (2) that a person may for any reason discriminate against other persons in his private affairs." *Lavoie v. Bitgood*, 457 F.2d at 10.' [See e.g. *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 169, 90 S.Ct. 1598 (1970).] The State of Connecticut ". . . may at the behest of private persons apply sanctions under summary process eviction stat. C.G.S. § 47a-23a to 41a] (see Appendix IV) pursuant to general rules of law which *have discriminatory as well as non-discriminatory application* . . ." as long as ". . . [the State of Connecticut] does not accept the responsibility of employing discriminatory classification." *Lavoie v. Bitgood*, 457 F.2d at 11 (emphasis added). As in *Railway Employees' Dept. v. Hanson*, 351 U.S. at 234, 76 S.Ct. at 719 where federal statute placed monopoly power in labor organizations to compel employees to join within 60 days of employment in order to secure "industrial peace and stabilize labor management relations," and where Wisconsin required membership in an integrated bar association" to [raise] the quality of professional services," *Lathrop v. Donahue*, 367 U.S. at 843, 81 S.Ct. at 1838, the State of Connecticut has conferred monopoly power (no relevant difference as if to a labor or bar association) to individual mobile home park owners like the Appellee Gopoian in the instant case on appeal. See *Lavoie v. Bitgood*,

457 F.2d at 13, 14. The inhibition of Gail Hancich's exercise of her property rights to due process and equal protection under the fifth and fourteenth amendments of the U.S. Constitution is ". . . entirely collateral to the primary purpose for which [zoning] restrictions [in Wallingford and in other Connecticut municipalities] are imposed on [mobile home owners]. *See Lavoie v. Bitgood,* 457 F.2d at 14.

The United States Supreme Court has ". . . long recognized that land use regulation [Wallingford zoning regulations in the instant case] does effect a taking [under a Fifth Amendment claim] if it does not 'substantially advance[s] legitimate state interests' and does 'den[y] an owner economically viable use of his land [or real property like a mobile home.]" *Nollan v. California Coastal Commission,* 55 LW 5145, 5147 (June 26, 1987), citing *Agins v. Triburon,* 447 U.S. 255, 260, 100 S.Ct. 2138, 2140 (1980) "[A] use restriction may constitute a 'taking' if not reasonably necessary to the effectuation of a substantial government purpose." *Penn Central Transportation Co. v. New York City,* 438 U.S. 104, 127 (1978). The Wallingford zoning regulations authorized by the State of Connecticut under C.G.S. § 8.2 (see Appendix V) effectively prohibit mobile manufactured homes ". . . through outright omission and through interpretation of other regulations (floor area, definition of dwelling, etc.) by local officials . . ." *Mobile Home Task Force, A Report to the Joint Standing Committee on General Law in Response to Special Act No. 82-49, An Act Concerning the Mobile Home Task Force* 12,58 (1983) (see Appendix III) (commissioned by the Connecticut General Assembly to review current mobile home problems and to make recommendations for legislation. p. 12); Wallingford Zoning Regulations (September 29, 1985). "Burdensome restrictions on [mobile home] development by local communities (such as Wallingford) has had . . . [the following] notable effects on the housing situation in Connecticut[:]": (1) frustrating ". . . the creation of new, unsubsidized, affordable single-family housing opportunities in the State; (2) ". . . relegat[ing] this form of housing to undesirable locations (commercial zones, industrial zones, freeways, etc.) where residents

are subjected to undesirable impacts;" and (3) essentially trapping residents (in existing parks) who can't move due to concern for loss of their investments and who are ". . . forced into conceding to unreasonable demands by park owners *who have a monopoly on available sites.*" *Mobile Home Task Report* . . . at 13 (see Appendix III) (underlined for emphasis).

Zoning regulations should be concerned with "(1) lessen[ing] congestion in the streets; (2) secur[ing] safety from fire, panic, flood, and other dangers; (3) promot[ing] health and general welfare; (4) providing adequate light and air; (5) preventing the overcrowding of land; (6) avoid[ing] undue concentration of population; and (7) facilitating the adequate provision for transportation, sewerage, schools, parks and other public requirements." C.G.S. § 8-2 (1985) (see Appendix V). The prohibition of mobile homes, specifically in at least 114 of Connecticut's 169 towns and through interpretation of regulations in thirteen other towns of which Wallingford is included, *Mobile Home Task Report* . . . at 57, 65 (see Appendix III) ". . . appears to relate to historical [mis]conceptions of 'trailer' parks as . . ." ". . . overcrowded, transit, unaesthetic, and sometimes unhealthy . . ." Local town officials express concerns about construction, type of occupants, mobility of homes sited, fiscal impact on communities, aesthetics, and fears of depreciation in the value of adjacent properties. *Mobile Home Task Report* at 12 (see Appendix III).

The Connecticut authorized zoning regulations of Wallingford do not "substantially advance legitimate state interests." There exists a housing crisis in Connecticut as well as in most of our nation. Connecticut has an identifiable lack of affordable housing opportunities." *Mobile Home Task Report* at 12 (see Appendix III). "Recent demographic trends, including increased household formation, decreasing household size, and increased divorce and separation, have created a need for affordable housing units which have not been satisfied." *Id.* The ". . . gross mismatch of supply and demand is aggravated by the widening gap between *incomes and*

*housing* prices (median house values increased by 184 percent between 1970 and 1980, while median household incomes increased only 85 percent during the same period) and the impact of the high costs of financing (interest rates were 12 percent +/– in 1980, versus 6½ percent +/– in 1970 resulting in 385 percent increases in the monthly mortgage cost of financing a median-value home)." *Id.*

Mobile homes can alleviate the housing crisis in Connecticut. ". . . [T]he current regulatory climate of prohibition of [mobile home] development is not justifiable . . ." and ". . . the only socially responsible position is one which encourages the *reasonable* regulation of [mobile homes] to ensure their compatability with traditional single-family dwellings." *Id.*

Wallingford's prohibition of mobile home development has no legitimate purpose and denies Gail Hancich equal protection and due process to protect her equitable property interest in her mobile home. Gail Hancich has no practical alternatives to dominion because ". . . other sorts of housing are not interchangeable with mobile homes," *Lavoie v. Bitgood*, 457 F.2d at 14, and as of January 1, 1985 out of the 230 mobile home parks in Connecticut, ". . . there are only 25 to 50 spaces available . . . and most of them have been reserved." *Shortage of Mobile Homes Creates Crunch*, The Day, (New London, Ct. Dec. 31, 1984, at 6, col. 1 (estimates provided by the Connecticut Department of Consumer Protection)). State action as a confluence of the State of Connecticut authorized summary process eviction and authorized discriminatory exclusion of mobile home owners through zoning regulations does exist in the instant case.

## II. THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT ERRED IN AFFIRMING THE DISMISSAL OF APPELLANT GAIL HANCICH'S COMPLAINT FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF COULD BE GRANTED AS ENTERED IN THE JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT BECAUSE THE STATE OF CONNECTICUT HAS AUTHORIZED SUMMARY PROCESS EVICTION AND MONOPOLY POWER (CREATED BY ZONING REGULATIONS) TO MOBILE HOME PARK OWNERS WHICH IN CONFLUENCE CONSTITUTE A TAKING OF THE CONSTITUTIONALLY PROTECTED PROPERTY INTEREST IN APPELLANT GAIL HANCICH'S MOBILE HOME.

### A. Gail Hancich, as a member of the class of mobile home owners in Connecticut, is a victim of disproportionate zoning legislation which working through the summary process eviction statute has taken her equitable interest in her mobile home property without justifiable and substantial government purpose, and has tendered no compensation for it in exchange.

Diminution in value of a mobile home is taking due to the denial of equal protection and due process under the law *without a substantial state purpose* required by *Nollan v. California Coastal Commission*, 55 LW at 5147. Richard A. Epstein, *Takings: Private Property and the Power of Eminent Domain*, 212–214 (1985). *Goldblatt v. Hempstead*, 369 U.S. 590, 82 S.Ct. 987 (1962) (holding non-taking had occurred because the restriction served a substantial public purpose). *See, Nectow v. Cambridge*, 277 U.S. 183, 48 S.Ct. 447 (1928; *cf. Moore v. East Cleveland*, 431 U.S. 494, 513–514, 97 S.Ct. 1932 (1977) (Stevens, J., concurring). In *Goldblatt v. Hempstead*, the Court employed the two-part test of *Lawrence v. Steel*, 152 U.S. 133, 137, 14 S.Ct. 499, 501 (1894) to determine whether the prohibitory effect of a zoning regulation was

sufficient to render it an unconstitutional taking. *Goldblatt v. Hempstead,* 369 U.S. at 595, 82 S.Ct. at 990. First, "the interest of the public [must appear] . . . to require such interference; and second, that "the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon individuals." *Id.*

This two-part test of *Lawrence v. Steel* demands a judicial balancing of public and private interest to assure that property owners are not denied "the justice and fairness guaranteed by the fifth and fourteenth amendments." *Agins v. Tiburon,* 447 U.S. 255, 262, 100 S.Ct. 2138, 2142 (1980) (action regarding an "open space" zoning regulation requiring owners of five acre tract lots to build no more than five single-family residences on the property). In *Agins,* the Court held that the government's purpose in "assuring careful and orderly development of residential property with provision for open space areas" outweighed the property owner's interest to avoid market value diminution of their land." *Agins v. Tiburon,* 447 U.S. at 262, 100 S.Ct. at 2142.

In the instant case, Appellant Gail Hancich's interest in avoiding market value diminution of her mobile home far outweighs the government's purpose in prohibiting mobile homes due to concerns about "construction, mobility of homes once sited, fiscal impact on communities, the aesthetic appearance, and widespread fears about depreciation of adjacent property values." *Mobile Home Task Report* at 12 (see Appendix III). These government concerns are invalid and unjustifiable due to the dramatic improvements in construction and development in recent years. *Id.* "[M]obile homes are equivalent to site-built single-family homes in many respects [except in the prefabrication and integrated chassis for delivery assistance] and provide 'decent, safe, and sanitary housing.' " *Id.* "Zoning is and should be concerned primarily with land use; thus, if [mobile homes] are compatible with single family developments, they should be permitted wherever single-family dwellings are permitted." *Id.*

The prohibition of mobile homes by zoning regulation has been invalidated as unconstitutional by various courts in our nation. *Lavoie v. Bitgood, supra. So. Burlington Cty N.A.A.C.P. v. Mount Laurel Two,* 92 N.J. 158, 456 A.2d 390 (1983) (Mount Laurel II). In *Mount Laurel II,* the Supreme Court of New Jersey held ". . . total exclusion [of mobile homes] will have to be justified by the same doctrines that would justify a total exclusion of apartment houses, town houses, or even single family residences" and that subjective sensibilities of present residents regarding aesthetic concerns are not a sufficient basis for exclusion." 92 N.J. at 276, 465 A.2d 390.

The zoning ordinance prohibiting mobile home development through omission and through interpretation of regulations and without a substantial legitimate state purpose as authorized by the State of Connecticut and enforced by the Town of Wallingford effects a taking of Gail Hancich's equitable interest in her mobile home property without affording her equal protection and due process under the summary process eviction statute. *See Agins v. Tiburon,* 100 S.Ct. at 2141. *See Nectow v. Cambridge,* 277 U.S. 183, 188, 48 S.Ct. 447, 448 (1928). *See Goldblatt v. Hempstead,* 369 U.S. at 595, 82 S.Ct. at 990. Because of the zoning restrictions, Gail Hancich cannot move her mobile home to another leased space in another mobile park home. Spaces are not available. *Shortage of Mobile Homes Creates a Crunch,* The Day, (New London, Ct. Dec. 31, 1984 at 6, col. 1). *Argument I of Appellant's Brief,* at 10. Because of the zoning restrictions, Gail Hancich cannot purchase a land lot in Wallingford to establish her mobile home. Town of Wallingford Zoning Regulations (1985) (no provision for mobile homes). Because of the zoning restrictions, Gail Hancich will lose over 50% of the market value of her home because Connecticut's summary process eviction statute C.G.S. § 47a-23 to 41a (see Appendix IV) disregards her real property interest and denies her a defense of uninhabitability for nonpayment.

**B. The State of Connecticut through its authorization of discriminatory zoning in Wallingford has denied Appellant Gail Hancich Fourteenth Amendment Due Process protection for her mobile home property interest in the summary eviction process.**

"Due process requires that there be an opportunity to present every available defense." *Lindsey v. Normet,* 405 U.S. 56, 65, 92 S.Ct. 862, 870 (1972) (citing *American Surety Co. v. Baldwin,* 287 U.S. 156, 168, 53 S.Ct. 98, 102 (1932)). See also *Nickey v. Mississippi,* 292 U.S. 393, 396, 54 S.Ct. 743, 744 (1934). In *Lindsey v. Normet,* a class action by month-to-month tenants seeking a declaratory judgment against a forcible entry and wrongful detainer statute, the Court held that the double-bond prerequisite for appealing the FED action was in violation of the Equal Protection Clause. The tenants in *Lindsey* rented their homes not the land on which a privately owned mobile home is situated as in the instant case. Appellant Gail Hancich enjoys a fundamental right to use or dispose of her real property without undue interference by the state. 5th and 14th Amendments to the U.S. Constitution. The due process clause embodies the essential elements of ". . . notice and opportunity to be heard and defend in orderly proceeding adapted to nature of case, and the guarantee of due process requires that every man have protection of day in court and benefit of law." Black's Dictionary (5th ed.) at 449 (citing *DiMaio v. Reid,* 132 N.J. L. 17, 37 A.2d 829, 830).

C.G.S. § 47a-23 (see Appendix VI) permits mobile park owners to terminate a land lease for nonpayment of rent and does not allow a defense of retaliatory eviction or other defenses such as interference with a right to disposition of real property (mobile home in the instant case) based on nonpayment of rent. C.G.S. § 47a-20a (see Appendix VII). *See Mobilia, Inc. v. Santos,* 4 Conn. App. 128, 492 A.2d 544 (1985). C.G.S. § 47a-20 (see Appendix VI) provides that "[a] landlord [of land for trailer included] shall not maintain an action or proceeding against a tenant to recover possession . . ." within six months of certain enumerated actions: attempts to remedy housing

and/or health violations, requests for needed repairs, and organizing or joining a tenant's union.

A tenant who has refused to pay rent is not privy to the defenses of C.G.S. § 47a-20 (see Appendix VI). In *Mobilia v. Santos,* the landlord had filed summary process action for nonpayment of rent and the tenants alleged that the action was primarily retaliatory because the defendants are two unrelated and unmarried women. The *Mobilia* court refused to discuss the retaliatory claim because nonpayment provided sufficient grounds for eviction and "Conn. Gen. Stat. § 47a-20 (see Appendix VI) is not a defense in such a circumstance," 492 A.2d at 545.

In the instant case, Gail Hancich is forbidden to plead the defense of uninhabitability of her property due to serious flooding damage because she had declined to pay rent while forced to move away. *See Mobilia v. Santos, supra.* If Gail Hancich had rented the mobile home she occupied, under C.G.S. § 21-82(6) (see Appendix VIII) "Required provisions of mobile home rental agreements" the landlord-owner is mandated to "maintain all manufactured homes rented by the owner in a condition which is structurally sound and capable of withstanding adverse effects of weather" and failure to comply is subject to penalties under C.G.S. § 21-83a (see Appendix IX). But Gail Hancich's due process rights are lost in the cracks of Connecticut statutory law.

Gail Hancich cannot plead the defense of uninhabitability nor can she plead the defense of diminution value of her property interest due to a forced sale of a mobile home off a lot. The State of Connecticut denies Gail Hancich the right to plead every defense available under *Lindsey v. Normet, supra,* and contradicts the ". . . law which hears before it condemns . . ." Black's Law Dictionary at 449 (citing Daniel Webster's definition of due process of law, *Wichita Council No. 120 of Security Ben. Ass'n. v. Security Ben Assn.,* 138 Kan. 841, 28 P.2d 976 (1980); *J.B. Barnes Drilling Co. v. Phillips,* 166 Okl. 154, 26 P.2d 766).

## III. THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT ERRED IN CONCLUDING THAT IT WOULD BE PREMATURE TO PRESUME THAT APPELLANT GAIL HANCICH WILL BE DEPRIVED OF THE BENEFIT OF C.G.S. § 21-79 (SEE APPENDIX X) BECAUSE GAIL HANCICH IS NO LONGER A MOBILE HOME RESIDENT UNDER STATUTORY AND CASE LAW DEFINITION.

"[A mobile home] '[r]esident' means a person who owns or rents *and* occupies a mobile manufactured home in a mobile manufactured home park." C.G.S. § 21-64(5) (1983) (see Appendix XI) (emphasis added). C.G.S. § 21-79 (see Appendix X) prohibiting a mobile home park owner from restricting resident's right to sell pertains only to *residents.* Appellant Gail Hancich is no longer a resident because she does not pay rent to Appellee Gopoian. *Lampasona v. Jacobs,* 7 Conn. App. 639, 509 A.2d 1089 (1986). See *Alteri v. Layton,* 35 Conn. Supp. 258, 408 A.2d 17 (1979).

In *Lampasona v. Jacobs,* the Appellate Court of Connecticut held that the lower court had clearly erred because the defendant's status as a resident of the mobile home park in this summary process eviction action had not been established. *Id.* The *Lampasona* court emphasized the dual aspect of "resident" definition as to one who (1) rents *and* (2) occupies; and chastised the lower court's determination based on an allegation of only occupancy. The court in *Alteri,* an action also for summary process eviction, held that the acceptance by the landlord of rent after a summary process eviction action had commenced would waive any default and renew the tenancy contractual relationship. 35 Conn. Sup. 258, , 408 A.2d at 17, 18. But the *Alteri* court emphasized acceptance of rent must be demonstrated with evidence such as endorsement or actually cashing of money [or personal check]. *Id.*

In the instant case, Appellant Gail Hancich has made use and occupancy payments (a condition of stay of summary

process eviction by the state court to permit the federal action) to her attorney, F. Woodward Lewis, who then remits on his business account the amount payable to Thomas T. Lonardo, Appellee Gopoian et al's attorney. There exists no evidence of Appellee Gopoian's acceptance of Gail Hancich's use and occupancy payments; therefore, no tenancy has been renewed and Gail Hancich is not a mobile resident who occupies and pays rent under C.G.S. § 21-64(5) (see Appendix XI).

Gail Hancich is denied any protection of her constitutionally protected property interest in her mobile home under C.G.S. § 21-79 (see Appendix X). Just as a complainant in a summary process action is incapable of the notice protection under C.G.S. § 21-80 (see Appendix XII) if not a "resident" under C.G.S. § 21-64(5) (see Appendix XI) and Connecticut case law, *Lampasona v. Jacobs*, 509 A.2d at 1091, Gail Hancich is incapable of "right to sell" protection under C.G.S. § 21-79 (see Appendix X) because she is *not* a "resident" under C.G.S. § 21-64(5) (see Appendix XI) and Connecticut case law. Also, even if this trial court were to give the Appellant the right to sell on the lot, such a right would be of small utility because by statute this pleading must progress once every three (3) days until trial.

## CONCLUSION

For all of the foregoing reasons, the judgment of the U.S. Court of Appeals for the Second Circuit, dismissing Appellant's case for failure to state a claim for which relief could be granted, should be reversed and remanded for trial. A complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the Plaintiff can prove no set of facts in support of the claim which would entitle her to relief. In passing on a motion to dismiss for failure to state a claim, all of the allegations in the complaint must be construed in favor of the party against whom the motion to dismiss is made, FRCP 12(b) (6).

Appellant has shown that the actions of Respondents are attributable to the state so as to satisfy the State Action Doctrine of the Fourteenth Amendment to the Constitution and the Color of State Law doctrine to support an action for damages under 42 U.S.C. 1893.

Appellant Gail Hancich has further shown that her right to equal protection and due process under the law has been jeopardized by the confluence of state authorized summary process eviction and monopoly power conveyed to mobile home park owners through state authorized discriminatory zoning regulations.

RESPECTFULLY SUBMITTED,
GAIL HANCICH

BY F. WOODWARD LEWIS, JR.
Attorney for the Petitioner

PATRICIA CARRUTHERS
Law Student

No.

# In The
# Supreme Court Of The United States

---

OCTOBER TERM, 1987

---

GAIL HANCICH,
*Petitioner,*

v.

MICHAEL GOPOIAN, ET AL,
*Respondents.*

---

## APPENDIX TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES

---

## APPENDIX TABLE OF CONTENTS

## APPENDIX I

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 1055 — August Term, 1986

(Submitted: March 25, 1987 Decided: Apr 08, 1987)

Docket No. 86-7535

---x

GAIL HANCICH,
*Plaintiff-Appellant,*

-v-

MICHAEL GOPOIAN, CATHERINE M. GOPOIAN, ALBO, INC., and ROBERT J. JAGODA,
*Defendants-Appellees.*

---x

BEFORE:

KAUFMAN and PIERCE, *Circuit Judges,* and LASKER, *District Judge.**

Appeal from an order of the United States District Court for the District of Connecticut (Eginton, *J.*) which granted appellees' motion to dismiss appellant's section 1983 complaint for failure to state a claim.

Affirmed.

---

* Hon. Morris E. Lasker, Senior Judge, United States District Court for the Southern District of New York, sitting by designation.

F. WOODWARD LEWIS, JR., ESQ.,
Yalesville, Connecticut,
*for Plaintiff-Appellant.*

THOMAS T. LONARDO, ESQ.,
Meriden, Connecticut
(James M.S. Ullman, Meriden,
Connecticut, of counsel),
*for Defendants-Appellees.*

PIERCE, *Circuit Judge:*

Gail Hancich appeals from a judgment entered in the United States District Court for the District of Connecticut (Eginton, *Judge*) dismissing her complaint brought pursuant to 42 U.S.C. § 1983 for failure to state a claim upon which relief could be granted. We affirm.

In 1982, appellant entered into an oral month-to-month lease with the appellees to rent a lot at Gopoian's Mobile Home Park in Wallingford, Connecticut; she had purchased the mobile home on the subject lot. Soon after she took possession, the Quinnipiac River flooded the park, damaging appellant's mobile home and rendering it uninhabitable for two and one-half months. During this period, appellant did not tender rental payments to appellees. When she later tendered payment of her back rent, appellees refused to accept it, choosing instead to bring an eviction proceeding by serving a summons and complaint after first serving and filing a notice to quit possession. Soon after appellees commenced the eviction proceeding in the state court, appellant commenced this action in the district court. The eviction proceeding has been stayed by the state court pending a determination in this action.

Appellant alleges that the appellees' use of the state court proceeding constitutes an action taken under color of state law which will deprive her of property in violation of the due process and equal protection clauses of the fifth and fourteenth amendments of the United States Constitution. The

deprivation alleged is the decrease in the resale value of the mobile home which she believes will occur due to her inability to sell the mobile home on the lot. Appellees moved to dismiss the complaint for failure to state a claim pursuant to Fed. R. Civ. P. 12(b)(6). The district court granted the motion, stating that the complaint did not allege (1) any state action depriving Hancich of (2) any constitutionally protected property right. We affirm, but do not reach these issues.

A Connecticut statute provides a summary eviction procedure for non-payment of rent or other specified reasons ("summary process statute"). *See* Conn. Gen. Stat. Ann. §§ 47a-23 to -42 (West 1985 & Supp. 1987). Under the statute, a landlord may serve upon the tenant notice to quit possession within eight days after service of the notice. *Id.* § 47a-23(a). If the tenant fails to quit possession by the time noticed, a commissioner of the Connecticut Superior Court may issue a writ, summons and complaint. The complaint may be made "returnable" six days after service upon the tenant. *Id.* § 47a-23a(a).

In *Lindsey v. Normet*, 405 U.S. 56 (1972), the Supreme Court was presented with a functionally indistinguishable case. That case concerned the Oregon Forcible Entry and Wrongful Detainer statute then in force, which provided a procedure similar to Connecticut's summary process statute. As in the *Lindsey* case, the Connecticut law affords the tenant a trial with prior notice. *See* 405 U.S. at 64-65; Conn. Gen. Stat. Ann. § 47a-23a (West Supp. 1987). Appellant does not allege how the summary proceeding herein will inadequately protect any right she has to remain in possession of the lot. *See* 405 U.S. at 64-65. Additionally, the Connecticut summary process statute sets forth an appellate procedure which does not contain a bonding requirement similar to that found invalid in the *Lindsey* case. *See id.* at 74-79; Conn. Gen. Stat. Ann. § 47a-35a (West 1985).

Appellant suggests that the Connecticut statute will not afford her an adequate opportunity to litigate the issue of the

alleged decreased resale value of her mobile home. *See* 405 U.S. at 65–69. However, another Connecticut statute provides to a mobile home owner the opportunity to sell the mobile home on the lot. *See* Conn. Gen. Stat. Ann. § 21-79 (West 1985). Since no eviction order has yet been entered in the state court, it would be premature for a federal court to presume that appellant herein will be deprived of the benefit of this statute. Thus, we need not now decide whether depriving appellant of the opportunity set forth in section 21-79 would constitute a taking of plaintiff's property without due process.

For the foregoing reasons, we conclude that even if appellant can show that she may be deprived of some property interest under color of state law, she has not alleged that the Connecticut summary process statute is facially infirm. Accordingly, for the reasons stated in *Lindsey*, we affirm the judgment of the district court.

## APPENDIX II

UNITED STATED DISTRICT COURT
DISTRICT OF CONNECTICUT

GAIL HANCICH

v. CIVIL N-82-566 (WWE)

MICHAEL GOPOIAN, et al

**JUDGMENT**

This cause came on for consideration of the defendants' motions to dismiss for failure to state a claim upon which relief could be granted by the Honorable Warren W. Eginton, United States District Judge, and

The Court having considered the defendants' motions and all the papers submitted in connection therewith filed its Ruling on Defendants' Motions to Dismiss granting the defendants motions,

It is therefore ORDERED and ADJUDGED that judgment be and is hereby entered for defendants.

Dated at Bridgeport, Connecticut this 29th day of May, 1986.

KEVIN F. ROWE, Clerk

By /s/ Carol E. Cannady
Carol E. Cannady
Deputy in Charge

UNITED STATED DISTRICT COURT
DISTRICT OF CONNECTICUT

GAIL HANCICH,
Plaintiff

V. Civil N-82-566 (WWE)

MICHAEL GOPOIAN ET AL,
Defendants

**RULING ON DEFENDANTS' MOTIONS TO DISMISS**

In the spring of 1982 the plaintiff entered into an oral month-to-month lease agreement with the defendant Michael Gopoian, through his agent corporation Albo, Inc., and his leasing agent Robert Jagoda. The lease was for the rental of Lot 76 in Gopoian's Mobile Home Park in Wallingford, Connecticut. She took possession, which possession was interrupted almost immediately when the Quinnipiac River overflowed its banks and dislocated her trailer. The damage to the trailer necessitated her living elsewhere for approximately two and one half months, during which time she tendered no rent to the defendant or his agents. When she later attempted to tender the back rent due, the defendants refused to accept the same, having served her with a notice to quit and an eviction notice based upon her failure to pay her monthly rent during her absence from the trailer park. Plaintiff has brought suit against Michael Gopoian, individually, his wife Catherine Gopoian, individually, Albo, Inc., as agent corporation, and Robert Jagoda, individually. She contends that as a result of the notice to quit and eviction action she will have lost an equitable property interest in her mobile home, amounting to the difference between the value of her mobile home on the lot and the value of same off the lot. This, she asserts, is a taking in contravention of the due process requirements and the equal protection clause of the Fourteenth Amendment to the United States Constitution. She further alleges that the conduct of the defendants violates the

Civil Rights Act, specifically 42 U.S.C. Section 1983 and Section 1988. All defendants have moved to dismiss the complaint for failure to state a claim, pursuant to Fed. R. Civ. P. 12(b)(6). For the following reasons the Motions to Dismiss are GRANTED.

## DISCUSSION

"A complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of [her] claim which would entitle [her] to relief." *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957). Moreover, in passing on a motion to dismiss, the allegations of the complaint must be construed in favor of the plaintiff. *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974). Even accepting the present plaintiff's allegations as true, however, her complaint does not state a cause of action under either the Fourteenth Amendment or Sections 1983 and 1988.

In order for this complaint to allege a valid cause of action it must first assert that the conduct complained of has deprived the plaintiff of a constitutionally protected right; second, the conduct allegedly causing the deprivation must be fairly attributable to the state. *Dahlberg v. Becker*, 748 F.2d 85, 89 (2d Cir. 1984). Plaintiff fails to meet either prerequisite and therefore may not surmount the jurisdictional barrier to federal court.

The primary determination which must be made in a case such as this is whether the plaintiff has been deprived of an interest encompassed by the Fourteenth Amendment's protection of liberty and property. ". . . [T]he range of interests protected by procedural due process is not infinite." *Board of Regents v. Roth*, 408 U.S. 564, 570 (1972). The reduction in value of plaintiff's equitable interest in her trailer is not constitutionally protected because it is not a "taking" within the meaning of the Fourteenth Amendment. *See, Penn Central Transportation Co. v. New York City*, 438 U.S. 104, 131 (1977); *Goldblatt v. Hempstead*, 369 U.S. 590, 594 (1962)

*Euclid v. Amber Realty Co.*, 272 U.S. 365 (1926) (75% diminution in value not protected); *Hadacheck v. Sebastian*, 239 U.S. 394 (1915) (87.5% diminution in value not protected).

Despite the conclusion that there is no constitutionally protected interest here, the court finds it judicially economical to discuss its further conclusions that there exists no state action and the defendants are not state actors for purposes of federal jurisdiction.

State action is the jurisdictional cornerstone to the granting of relief under the Fourteenth Amendment or 42 U.S.C. Sec. 1983. State action is at its core a unitary concept. Under this concept the only issue is whether sufficient state contacts do or do not exist. If the court finds a sufficient quantum of state connections to a particular activity, then that activity will be subject to the strictures of the Fourteenth Amendment, even though performed by a private party. Several tests have been devised by the Supreme Court to determine whether a defendant's actions constitute "state" action of a type regulated by the Fourteenth Amendment.

The "public function" doctrine holds that when private persons are engaged in the exercise of governmental functions their activities are subject to similar constitutional restrictions. In other words, the state cannot free itself from the limitations of the Constitution in the operation of its governmental functions merely be delegating certain functions to otherwise private individuals. *See, e.g., Smith v. Allwright*, 321 U.S. 649 (1944) (electoral process public function); *Terry v. Adams*, 345 U.S. 461 (1953) (same); *Marsh v. Alabama*, 326 U.S. 501 (1946) (corporation which wholly owned and operated town served public function).

The public function concept has, however, been very narrowly construed. In four recent Supreme Court decisions it has been held that the function must be one which has traditionally been *exclusively* the domain of the state. "The required nexus may be present if the private entity has

exercised powers that are 'traditionally the exclusive prerogative of the state.' " *Blum v. Yaretsky*, 457 U.S. 991, 1005 (1981) (quoting *Jackson v. Metropolitan Edison Co.*, 419 U.S. 345 (1974)). This exclusivity requirement was not met by a privately-owned utility licensed and regulated by the state, *Jackson;* a warehouseman's sale regulated by state statute, *Flagg Brothers, Inc. v. Brooks*, 436 U.S. 149 (1978); a private school which received most of its funding from state sources, *Rendell-Baker v. Kohn*, 457 U.S. 830 (1981); and a nursing home funded through state monies, *Blum.*

The majorities of *Jackson* and *Blum* seem to impose still another requirement for application of the public function doctrine: that the activity be one which the state is *required* to provide by statute or by state constitution. *Jackson*, 419 U.S. at 353 ("But while the Pennsylvania statute imposes an obligation to furnish service on regulated utilities, it imposes no such obligation on the State."); *Blum*, 457 U.S. at 1011 ("The state constitutional provisions . . . do no more than authorize the legislature to provide funds for the care of the needy. . . . They do not mandate the provision of any particular care. . . . [The medicaid statute] does not require that the States provide the services themselves."). Thus no private sector company should be subject to constitutional limitations of its autonomy unless it performs an exclusive governmental function, non-discretionary in nature, and is taking action under the direction of statutory or constitutional authority.

Analyzed in light of these principles, plaintiff's assertions of state action cannot be maintained. The operation of a mobile home park is not a delegated governmental function. The fact that a license to do business is issued by the State of Connecticut to the defendants to run a trailer park is constitutionally irrelevant. *Moose Lodge No. 7 v. Irvis*, 407 U.S. 163 (1972) (state issued liquor license not sufficient contact to turn private actor into state actor for purposes of the Fourteenth Amendment). Defendants' actions do not constitute state action under the public function doctrine.

The second general test of state action doctrine relates not to the type of activity carried out by the private actor, but to the conduct of the government. If the government is sufficiently involved in the private actor's conduct, or encourages that conduct or benefits from it, the acts of the private party will be deemed state action, subject to constitutional review. A common denomination of this second test is the "state entanglement" or "state nexus" theory of state action. *Huff v. Notre Dame High School of West Haven*, 456 F. Supp. 1145, 1147 (D. Conn. 1978) ("The 'state entanglement' theory provides that 'state action' is present when the state is entangled with the operations of a private enterprise."). One way in which the state can become responsible for the conduct of a private party is by commanding or enforcing that conduct. *See, e.g. Shelley v. Kraemer*, 334 U.S. 1 (1948) (judicial enforcement of a racially restrictive covenant would constitute state action and would violate the Fourteenth Amendment). Neither the City of Wallingford nor the State of Connecticut participated in the tenant selection process of the defendants, and the decision to evict the plaintiff was made entirely by the defendant Michael Gopoian or his rental agents. There is clearly no *Shelley*-type commandment or enforcement in the present case.

State action will be found if the state encourages the private party to act in a manner violative of the Fourteenth Amendment. In *Reitman v. Mulkey*, 387 U.S. 369 (1967), the Supreme Court found state action where California voters amended their constitution to prohibit the government from interfering with any private individual's right to discriminate in the sale or lease of residential real estate. The Court held that the amendment encouraged private discrimination. In this instance neither the City of Wallingford nor the State of Connecticut took any action whatsoever or made any recommendations as to the eviction of the plaintiff from the trailer park. Indeed, the defendants received no guidance or recommendations from any government body concerning their conduct. The eviction was a private business decision of the owners of the mobile home park acting autonomously. The

plaintiff finds no support in the *Reitman* decision for her assertions of state action.

Where the private actor and government can be said to be in a "symbiotic relationship" the private actor will be subject to the Fourteenth Amendment constraints. The classic symbiotic relationship was found in *Burton v. Wilmington Parking Authority*, 365 U.S. 715 (1961), where the Supreme Court held that a privately owned restaurant which leased space in a government parking facility could not refuse service to members of racial minorities. The Court applied a totality of the circumstances test to the contacts between the government and the private actor. While there was no single factor which indicated the presence of state action, under the totality test the restaurant's activities were subjected to constitutional review.

Plaintiff cannot succeed in her allegations of a *Burton*-type relationship between the City of Wallingford, or the State of Connecticut, and the trailer park. First, the propriety of using this test is limited for the most part to cases involving racial discrimination. *Arredondo v. Laredo Municipal Transit System*, 581 F. Supp. 868, 871 (S.D. Texas 1984) ("[T]he key to *Burton* was the fact that the state was profiting financially as a result of the racial discrimination of which that plaintiff complained."); *Lubin v. Crittenden Hospital Association*, 713 F.2d 414, 416 (8th Cir. 1983) ("Use of the symbiotic relationship test is limited generally to cases involving racial discrimination."). Second, even if *Burton* were the appropriate test, the trailer park cannot be said to have "so far insinuated itself into a position of interdependence" with the City of Wallingford, or the State of Connecticut, "that it must be recognized as a joint participant in the challenged activity." *Burton*, 365 U.S. at 725. The trailer park is not an agency, department or association of the City or State.

Thus, under all traditional state action tests the ultimate issue of determining whether these defendants are subject to suit must be answered in the negative; the alleged

infringements of plaintiff's rights are not fairly attributable to any form of state action. A review of the notice to quit or the eviction is therefore not within the jurisdiction of this court.

In conclusion, the court finds that the plaintiff is not entitled to relief in federal court. The defendants' Motions to Dismiss for failure to state a claim upon which relief could be granted are hereby GRANTED.

Signed this 23rd day of May, 1986 at Bridgeport, Connecticut.

/s/ Warren W. Eginton

WARREN W. EGINTON, U.S.D.J.

## APPENDIX III

## EXCERPTED:
## MOBILE HOME TASK FORCE

a report to the
JOINT STANDING COMMITTEE ON GENERAL LAW

in response to

SPECIAL ACT NO. 82-49
AN ACT CONCERNING THE
MOBILE HOME TASK FORCE

STATE OF CONNECTICUT
MOBILE HOME TASK FORCE
AS AUTHORIZED BY PUBLIC ACT 82-49

TO: Senator Michael J. Skelley
Senate Chairperson
General Law Committee

Representative Maurice B. Mosley
House Chairperson
General Law Committee

FROM: Michael T. Duffy, Director
Department of Housing
State of Connecticut

SUBJECT: SPECIAL ACT NUMBER 82-49

DATE: January, 1983

In response to Special Act Number 82-49, the Mobile Home Task Force is forwarding to you its findings and recommendations. These recommendations include proposals for both legislative and regulatory changes.

Our task force first met in July of 1982 as soon as the appointing bodies, specified in Special Act Number 82-49, appointed the eleven members. As chairperson, I am happy to say that its members are a cooperative, productive, intelligent, and sensitive group of individuals. We have been able to assemble this report in a short period of time because of their commitment to solve problems associated with mobile manufactured housing in Connecticut.

We owe a special thank you to your colleague, Representative Mary Mushinsky, who has given us inspiration, direction, an order of priorities, and the legislative perspective. Her advocacy on the part of mobile home owners has guided us through a complex set of issues.

If you have any questions or need our assistance, please feel free to call on us at any time.

MTD/RGP/la

Substitute House No. 5590

SPECIAL ACT NO. 82-49

AN ACT CONCERNING THE MOBILE HOME TASK FORCE.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. (a) There is established a mobile home task force composed of eleven members as follows: One member of the Connecticut real estate commission to be appointed by the commissioner of consumer protection; an employee of the department of housing to be appointed by the commissioner of housing; an attorney-at-law specializing in mobile home matters to be appointed by the consumer law section of the Connecticut Bar Association; two town planners, one from a rural community and the other from a suburban or urban community, to be appointed by the president of the Connecticut chapter of the American Institute of Planners; two mobile home park owners to be appointed by the commissioner of consumer protection; two mobile home park tenants or representatives of such tenants, to be appointed by the real estate commission; a senior citizen to be appointed by the commissioner on aging and a representative of the Central Housing Committee of the state, to be appointed by the commissioner of housing.

(b) The task force shall review: (1) Taxation of mobile homes; (2) the need for uniform standards concerning construction of mobile home units; (3) the need for one agency to assume regulatory responsibility for such units; (4) the *problem of exclusionary zoning and the housing needs of citizens of the state;* (5) the problem concerning the inability to sell older units and to secure financing and insurance; (6) misconceptions about and prejudice against mobile home dwellers while compiling a demographic profile of such individuals; (7) whether an owner of a mobile home park

should be permitted to maintain an action for summary process against a tenant in order to obtain personal use of the land occupied by the tenant; and (8) the need for certification that a mobile home being sold is safe for human habitation in order to prevent its removal from a mobile home park.

(c) On or before January 1, 1983, the task force shall report to the joint standing committee on general law its findings and recommendations, including proposals for legislative and regulatory changes.

Sec. 2. The sum of two thousand dollars is appropriated to the department of housing, for the fiscal year ending June 30, 1983, from the sum appropriated to the finance advisory committee under section 1 of special act 82-10, for 1982 acts without appropriations, for use by the mobile home task force established by section 1 of this act.

Sec. 3. This act shall take effect July 1, 1982.

## II FINDINGS AND RECOMMENDATIONS

### Demographic Profile of Mobile Home Residents

1. Problem Analysis

This task force's contacts with mobile home residents, park owners, and technical experts, and its survey of existing data and literature, have confirmed the existence of widespread misconceptions regarding the nature of mobile homes and their residents. These stereotypical perceptions have clearly contributed to most, if not all of the problems now confronting mobile home owners, and have blocked the expanded use of mobile homes as a source of affordable housing in Connecticut.

The following major stereotypes of mobile home dwellers have emerged from our work to date:

- they tend to have large families with many school-age children;
- they are lower income;
- they move frequently;
- they produce insufficient tax revenue to offset the costs of schools and other services supplied by the town; and
- their homes and parks are unaesthetic and poorly maintained.

In short, mobile home residents are generally perceived as a destabilizing influence and a financial drain on their communities.

Largely due to these perceptions, communities have used zoning restrictions to exclude new mobile home development and to restrict the expansion of existing parks. Consequently, the number of available mobile home lots in Connecticut has remained stagnant, *affording existing park owners essentially monopoly control and subjecting residents to the potential abuse inherent in their position as*

*captives of a reined-in market.* The resulting problems tend to perpetuate the stereotypes originally responsible for the underlying problem.

Therefore, addressing these stereotypes of mobile home residents is critical to any comprehensive effort to improve conditions for current residents and to provide new opportunities for mobile home development. Towards this end, our task force was charged with identifying the major misconceptions about mobile home residents and compiling a demographic profile in order to fairly test these prejudices.

2. Existing Efforts to Address the Problem

Several limited attempts have been made to assemble a demographic study of Connecticut mobile home residents:

- a report on mobile homes in southeastern Connecticut, conducted in 1980 by the Southeastern Connecticut Regional Planning Agency (SCRPA);

* * * * *

## Zoning and Mobile/Manufactured Housing

1. Problem Analysis

The Mobile Home Task Force found from a detailed study that zoning is a central problem associated with MMHs in the State of Connecticut. Zoning is a powerful tool used by over 95 percent of the communities in Connecticut to regulate the pattern and form of land development. Committees derive the power to enact zoning regulations addressing land use, coverage, density, and bulk from Chapter 124 of the Connecticut General Statutes. Each community has adopted unique zoning regulations under this statutory delegation of authority which deal with many aspects of land use, building form, and development procedures and, most importantly, which reflect community perceptions and values.

The main problem created by zoning is that many communities are using their zoning regulations to prohibit the development of MMHs anywhere within Connecticut cities and towns. At the present time, many of the communities in the state prohibit new MMHs. Even communities which do permit MMHs often restrict them to commercial or industrial zones or areas which are not generally suitable for residential uses. The regulations used to prohibit MMHs range from an outright prohibition of "mobile homes" and "trailers" to interpretation of other regulations (floor area, definition of dwelling, etc.) by local officials in such a way as to effectively prohibit MMHs. A wealth of information outlining how MMHs are treated in Connecticut communities has been collected by the MHTF, and this information is presented in more detail in the Appendix. The prohibition of MMHs appears to relate to historical perceptions of "trailer" parks and overcrowded, transit, unaesthetic, and sometimes unhealthy images that these parks elicited. The concerns about MMHs most commonly expressed currently by local officials and citizens include construction, the type of occupants, mobility of the homes

once sited, fiscal impact on communities, the aesthetic appearance, and widespread fears about depreciation of adjacent property values.

This prohibition on MMH development occurs at a time when there is an identifiable lack of affordable housing opportunities in Connecticut. Recent demographic trends, including increased household formation, decreasing household size, and increased divorce and separation, have created a need for affordable housing units which has not been satisfied. While current economic circumstances have dampened the effective demand for housing units, the need remains. Housing market model for the State of Connecticut show that there is a demand for affordable units, given the current economic situation and development costs. This gross mismatch of supply and demand is aggravated by the widening gap between incomes and housing prices (median house values increased by 184 percent between 1970 and 1980, while median household incomes increased only 85 percent during the same period) and the impact of the high costs of financing (interest rates were 12 percent +/– in 1980 versus 6½ percent +/– in 1970, resulting in 385 percent increase in the monthly mortgage cost of financing a median-value home). Further documentation of the "housing crisis" in Connecticut is available from two recent Department of Housing reports: the *1981 Housing Market Report* and the * * *

2. 3-Year Plan.

MMHs can help to solve these problems. Clearly, MMHs represent an example of the "best available technology" for providing affordable housing for the citizens of the State of Connecticut.

Burdensome restrictions on MMH development by local communities has had several notable effects on the housing situation in Connecticut. Basically, prohibition of MMHs has prevented the creation of new, unsubsidized, affordable

single-family housing opportunities in the State. Unreasonable regulation of MMHs has relegated this form of housing to undesirable locations (commercial zones, industrial zones, freeways, etc.) where residents are subjected to undesirable impacts. An additional impact caused by burdensome restrictions on MMH development is that residents in existing parks are essentially trapped in those locations, concerned about the investment in their MMHs, unable to move to other areas, and, most importantly perhaps, forced into conceding to unreasonable demands by park owners who have a monopoly on available sites.

As a result of extensive study and deliberation on the current situation, the MHTF concluded that mobile homes are equivalent to site-built single-family homes in many respects and provide "decent, safe, and sanitary housing". Improvements in MMH construction and development in recent years have been dramatic and have made many of the concerns expressed by local officials and citizens obsolete. The discrepancy between peoples' perceptions of "trailers" and "mobile homes" and the reality of the current state-of-the-art MMH is growing rapidly. As a result of this discrepancy, *the regulatory posture of local officials has not kept pace with the development of the product.* In fact, the only significant differences noted by the MHTF between a MMH and a site-built dwelling is that the MMH is prefabricated and that it has an integrated chassis to assist in delivery to sites.

The MHTF has concluded, also, that the current regulatory climate of prohibition of MMH development is not justifiable. While there have been no significant Connecticut court cases challenging the prohibition of MMHs, the MHTF finds that the only socially responsible position is one which encourages the reasonable regulation of MMHs to ensure their compatibility with traditional single-family dwellings and to then regulate them as single-family dwellings. Zoning is and should be concerned primarily with land use; thus, if MMHs are compatible

with single-family development, they should be permitted wherever single-family dwellings are permitted. Criteria which should be considered to ensure the compatibility of single-family dwellings and MMHs may include peak roofs and eaves, clapboard or natural-material sidings, permanent foundations or foundation piers with skirts, "double-wide" units, siting parallel to streets. Under these conditions, MMHs would be practically indistinguishable from ranch-style homes which are site-built. Attached or detached garages and appropriate landscaping would also help to assure compatibility.

After review of many regulations from Connecticut and other states, the MHTF also found that there is a need for model regulations for communities to consider adopting for the reasonable regulation of MMH developments. These model regulations, including a descriptive narrative, are presented in the Appendix. The most important consideration in these model regulations was to regulate MMHs in ways to ensure compatibility with adjacent uses as much as possible. In the development of model regulations for MMH developments, a secondary consideration was to allow as much flexibility as possible in the siting of units without overcrowding a site. Finally, it is the intent of the MHTF to "mainstream" compatible MMHs as much as possible. Therefore, if it is possible to make slight modifications to existing regulations to permit compatible MMH developments, then this is desirable to writing new regulations.

3. Existing Efforts to Address the Problem

Beyond the work of the MHTF, there do not appear to be any identifiable, organized efforts to address these problems. As with most issues, there are many groups (residents, park owners, developers, community officials, and others), with competing viewpoints and each lacking a constituency large enough to fully address the issues. This is why the Connecticut General Assembly created the MHTF.

Several communities have, either on their own or at the request of developers, amended their zoning regulations recently to permit MMHs. Some communities, such as Groton, used to permit mobile homes, then did not permit them, but have recently amended their regulations to once again permit MMHs. Other communities which may or may not have had MMHs, such as Colchester, Plainfield, and Thomaston, have considered and/or adopted changes to their Zoning Regulations to permit the development of MMHs. While these iniatives are to be commended, they only present solutions to the broader problem on a town-by-town basis rather than at the State level.

As previously mentioned, there have not been any significant challenges that the MHTF is aware of in the courts to the prohibition of MMHs by Connecticut municipalities. *Courts in other parts of the country have held this prohibition to be invalid;* but for such an approach to have widespread applicability in Connecticut, a decision by the State Supreme Court, a very expensive undertaking, would be necessary. This effort does not appear to be underway at the present time.

4. Recommended Action

The MHTF found that MMHs are equivalent to single-family dwellings under certain conditions and that there do not appear to be any existing efforts to address the problem of prohibition of MMHs by local communities. Therefore, the MHTF recommends that the Legislature enact a law which states that:

a. Each municipality shall make some provision in its zoning regulations for MMHs on single-family lots in residential areas. In providing for MMHs on single lots, a municipality may not impose standards regarding bulk, density, or siting more stringent than those applied to other forms of housing in the same zone.

The model regulations for MMHs on individual lots, which are presented in the Appendix, suggest how communities may reasonably regulate MMHs to ensure compatibility. Under this proposal, communities would not have to permit MMHs in all residential zones but may exercise some local control over the areas where MMHs may be permitted.

Since the MHTF found that MMHs are equivalent to single-family dwellings in many respects, the MHTF also concluded that *MMH developments are no different from other types of cluster development, planned unit development, or other forms of higher density housing.* Accordingly, the MHTF recommends that the Legislature enact a law which states as follows:

b. Each municipality which permits multifamily, cluster, or planned-unit developments shall make some provision in its zoning regulations for MMH developments. In providing for MMH developments, a municipality may not impose standards regarding bulk, density, or siting more stringent than those applied to other forms of housing in the same zone.

The model regulations for MMH developments, which are presented in the Appendix, suggest how communities may reasonably regulate MMH developments. While the compatibility requirements specified for MMHs on individual lots are desirable for developments, they are not a necessity. As stated previously, the intent is to "mainstream" MMHs as much as possible. If it is possible for communities to use existing regulations, this is preferable to adopting new regulations.

* * * * *

## MODEL ZONING ORDINANCE
## MOBILE MANUFACTURED HOMES
## ON SEPARATE LOTS

### I. RATIONALE

The Mobile Home Task Force has concluded that:

A. advancement in design features of modern mobile homes to make such housing more compatible with the outward appearance of other types of housing; and

B. the HUD Safety and Building Standards, mobile homes are now quality permanent housing and no valid public purpose is served, nor does there exist an inherent need to continue to confine mobile homes to commercial parks. In order to accommodate mobile manufactured homes, which are constructed to Federal Standards and compatible in design to other housing, we are providing the following guidelines in the form of a "model ordinance".

### II. MODEL ZONING ORDINANCE

A. Purpose

It is the purpose of this regulation to recognize that mobile manufactured homes are a valid form of permanent housing which could be compatible with site built housing under certain conditions and, therefore, shall be allowed on lots in some or all residential zoning districts in accordance with the standards in Section B.

> The procedure utilized in this Model Ordinance is to allow mobile manufactured homes on separate lots in certain residential zones as a "matter of right". The "as of right" applies to mobile manufactured homes which meet the standards as set forth in Subsection B — Standards.

Communities could vary this approach to provide for a Commission/ Board review of each proposal through a "Special Permit of Exception" procedure. Such a procedure is not encouraged, unless a "Special Permit or Exception" is the procedure for "site built" homes within the particular zoning district. The reason for discouraging the "Special Permit of Exception" process is to treat mobile manufactured homes as "site built" homes.

B. Standards

The siting of mobile manufactured homes on single lots are subject to the following safety and compatibility standards:

1. All bulk, density, lot, set back, screening and parking requirements of the zoning district are applicable to the siting of a mobile manufactured home.

   The intent of this Model Ordinance is to treat compatible single family mobile manufactured homes the same as "site built" homes, therefore all density, bulk, etc. requirements of the locational zone should be applicable to mobile manufactured homes.

2. All utility requirements of site built homes are applicable to mobile manufactured homes in this district.

   Again, the intent is to treat compatible mobile manufactured homes the same as "site built" homes and therefore, all utility requirements should be the same.

3. In order for a mobile manufactured home to be located in these districts, said homes:

   a. if not located on a conventional foundation, shall be underlaid by a concrete pad, or poured concrete piers adequate to support the weight of the mobile manufactured home without movement due to frost heaving or settling. All mobile manufactured homes must be properly secured;
   b. if not located on a conventional foundation, shall be skirted with corrosion-resistant material;
   c. shall be so located that the longer axis is somewhat parallel to the principal street frontage;
   d. shall have its fuel tanks and bottled gas tank securely fastened. Said tanks shall be screened from view from all streets and neighboring properties.

In adopting these regulations, communities can take the opportunity to revise their zoning ordinances by eliminating minimum floor area requirements. These requirements prohibit MMHs because of their unique design features. The intent is to treat *compatible* mobile manufactured homes as "site built" homes. These requirements are to insure compatibility:

a. An adequate foundation and tie-down is necessary for stabilization and safety reasons;

b. The skirting gives appearance of attachment to ground and permanency;

c. If there is one feature of siting a "typical" mobile manufactured home that differs from the siting of a "typical" stick-built house it would be that the mobile manufactured home is sited somewhat perpendicular to the access road. For compatibility, it is suggested that mobile manufactured homes be sited somewhat parallel to the access road;

e. Most site built homes have fuel tanks hidden from view (i.e. in basement or underground) therefore for compatibility, screening of such tanks are suggested for mobile manufactured homes. Also, the visibility of such tanks gives the appearance of mobility which is to be discouraged.

Other compatibility provisions, i.e. types of exterior finishes, etc. might be incorporated. A note of caution is that the intent is to treat both forms of housing similar and *not* to be discriminatory.

* * * * *

## MODEL ZONING ORDINANCE
## MOBILE MANUFACTURED HOME DEVELOPMENTS

### I RATIONALE

A. The Mobile Home Task Force concluded that mobile manufactured housing is equivalent to other forms of housing, Therefore, local jurisdictions which permit higher density housing, should permit mobile manufactured housing developments as well.

B. The Mobile Home Task Force further concluded that advancement in design features in modern mobile manufactured homes built to HUD Safety and Building Standards make them comparable in quality to other forms of housing. Therefore, ordinances used to regulate mobile manufactured home developments should not differ from ordinances which regulate other forms of residential developments. We encourage communities to use their planned unit development or cluster regulations for mobile manufactured home developments.

> Please note that narrative portions are enclosed to separate them from the ordinances itself, and explain the reason for many of the provisions of the model ordinance.

1. **Purpose**

It is the purpose of this section to:

- permit variations in density and residential use types which would not otherwise be feasible,
- permit flexible site design so that development may be constructed in harmony with the preserve natural site features and the scenic environment,

- encourage the creation of attractive Mobile Manufactured Home Developments, and
- protect the health, safety, and welfare of all residents of the community.

2. **Procedure**

a. Mobile Manufactured Home Developments are only permitted in some or all Residential Zones (specify zones) when authorized by the Planning and Zoning Commission as a Special Exception. The Commission shall determine that all the Special Exception criteria of these Regulations are met.

> Please note that in order to "mainstream" MMH's, municipalities may wish to delete from their zoning ordinances the limited use of MMH parks in certain restricted zones and, instead, allow mobile manufactured home developments in areas where other housing developments are permitted such as cluster developments and PUD's. Special Exception is optional depending on community practices and procedures for higher density land uses. If localities allow other higher density used by right, then they should permit mobile manufactured housing developments as of right as well.

b. Applications for Mobile Manufactured Home Developments shall be accompanied by an overall plan of development at 100 scale for the entire parcel. Such plan of development shall show the layout and location of proposed buildings, structures, roads and improvements, utilities, parking areas, landscaped areas and buffers, and other information which the Commission may reasonably require.

In addition, a plan shall be submitted which shows the location of buildings, streets, driveways, and other

facilities on the subject land and adjoining properties within 500 feet.

> The purpose of using a 100 scale map is to get an overview of the entire development. It is important to collect information about properties within 500 feet of the MMH development in order to place the MMH development in a neighborhood development context. While 500 feet is desirable, it is only a guideline. Communities should use standard practices for other housing types for MMH developments as well.

c. Application for MMH Developments shall also be accompanied by detailed site development plans at 40 scale of each phase of development for review by the Commission. Grading plans, utility plans, construction drawings, and landscaping plans shall be submitted as part of the site plan.

> Municipalities should require only 40 scale plans for each final site plan approval. Preliminary approvals would require only 100 scale plans.

d. Before any Certificates of Occupancy are issued for any mobile homes in a particular phase in the development, a bond in a form and amount satisfactory to the Commission shall be posted by the developer to guarantee the construction of the remaining site improvements or that phase.

> The purpose of the bond is to assure completion of the required improvements.

3. **Permitted Uses**

a. Mobile Manufactured Homes.

b. Playgrounds, recreation areas, parks, open spaces, natural areas, and community swimming pools, clubhouses and recreation facilities.

c. Other accessory uses and structures which are customarily incidental and subordinate to the principal uses.

> Communities may wish to expand or contract permitted uses depending on local conditions, practices, and feasibility.

4. **Parcel Development Requirements**

Maximum Density
Maximum Parcel Coverage
Minimum Parcel Front Yard — 60 feet
Minimum Parcel Side/Rear Yards — 30 feet

> Parcel development requirements can provide communities with an excellent opportunity to make affordable housing a reality by reducing development costs. Lower density requirements are often associated with lower development costs. These costs, incurred by developers eventually are passed on to the MMH unit owners through rental rates or other fees.
>
> *Density requirements* should correspond to density permitted on other similar housing developments in the community provided they are not overly restrictive. These requirements should relate to provisions of utilities, e.g. sewer and water.
>
> *Parcel coverage* requirements should relate to density. As density increases, parcel coverage increases. Again, these requirements should be similar to what other developments allow.

*Yard requirements* relate to the *entire parcel* of development, not individual sites. Yard requirements should be modified to relate to requirements for similar types of housing in the community.

Communities may wish to regulate minimum parcel size, maximum dwelling unit size, etc., but only if they place similar requirements on other forms of housing.

5. **Utility Requirements**

   a. Roads -- Roads should conform to the applicable section of the Subdivision Regulations except that the width of pavement may be modified at the discretion of the Commission.

   *Road requirements* in MMH developments should be similar to those required for other similar types of housing developments. In the absence of such requirements, the subdivision regulations of the community would provide an acceptable standard. Width of roads should depend on the number of units in the development. Obviously, the larger number of units, the wider the roads. Curbs are not desirable due to the need to placing the MMH units on the sites.

   b. Water — A public water supply is required where reasonably available. The Commission may waive this requirement in unusual situations.

   The need for public *water* depends on the desirability of alternative potable water sources. Public water supply is desirable. Requirements should not be any stricter than for similar types of housing. The question of reasonable availability is subject to interpretation by the Zoning Commission and should be

reasonably related to similar requirements for other types of housing. Any waiver of requirements should be approved by the Director of Health.

c. Sewage — Public sewers are required where reasonably available. The Commission may waive this requirement in unusual situations in favor of community septic systems.

The need for *sewers* depends on density, soil types, and suitability for septic systems. Again, requirements should not be stricter than for other types of housing. The question of reasonable availability is subject to interpretation by the Zoning Commission and should be reasonably related to similar requirements for other types of housing. Any waiver of requirements should be approved by the Director of Health and/or the Town Engineer.

d. Other Utilities — All other utilities except fuel oil and bottled gas shall be located underground to the individual mobile home site. Fuel oil and bottled gas should be securely fastened and adequately serviced for neighboring properties at all streets.

*Other utilities:* Underground utilities should only be required if they are the normative requirements for similar types of housing.

6. **Land Use and Site Development Requirements**

a. Parking
Each Mobile Manufactured Home shall be provided with at least 2.0 parking spaces per unit located with convenient access to the front entrances of the buildings.

Additional parking spaces shall be provided for other principal and accessory used within the development in sufficient numbers to satisfy the parking needs of the proposed use.

b. Landscaping
A landscape buffer shall be provided around the perimeter of the parcel. This buffer shall provide a light, noise and visual barrier through the use of existing and proposed vegetation and landscape treatments such as berms, walls and other improvements.

| *Buffer* requirements should be the same as for other types of housing. |
|---|

c. Open Space
Consolidated Open Space shall be provided within the development. Open Space shall be located so as to preserve significant natural site features and maximize the utility of the open space to the residents.

| *Open Space* requirements should be the same as for other types of housing. |
|---|

d. Mobile Manufactured Home Locations

i. All Mobile Manufactured Homes and other buildings shall be at least 25 feet from the edge of pavement of any roads or cul-de-sacs,

ii. Mobile Manufactured Homes shall be at least 30 feet from other Mobile Manufactured Homes,

iii. All other buildings and facilities shall be located at least 60 feet from any Mobile Manufactured Home,

iv. The Commission may reduce the location requirements of this section provided that, in the Commission's discretion, the public health, safety, and welfare are safeguarded.

The most significant aspect of this ordinance is that there is *no* minimum MMH *site area requirement,* Units may be located on the site, observing the building location requirements, and *then* sites of varying areas can be drawn around them. The Zoning Commission may wish to regulate the location of accessory buildings, if any. N.B. This section of the model ordinance gives the Zoning Commission the authority to modify MMH locations and orientations to respond to site conditions provided public health, safety, and welfare is safeguarded.

e. Mobile Manufactured Home Orientations

i. At least 25% of all Mobile Manufactured Homes shall be located paralled to main roads or cul-de-sacs,

ii. If the long dimension of adjacent mobile homes is not offset by more than 15°, then the separation of those units shall be at least 45 feet.

iii. Mobile Manufactured Homes shall be located to facilitate solar access (i.e. within 30° of the south) as far as practicable.

iv. The Commission may modify the requirements of this section provided that, in the Commission's discretion, the public health, safety, and welfare are safeguarded.

Major objections to MMH developments have centered around monotonous *building orientations* and lack of visual variety. The requirements in this model ordinance are designed to address these concerns, promote MMH developments, and to promote *solar access* as far as practicable.

Again, the Zoning Commission has the authority to modify MMH locations and orientations in response to site conditions provided public health, safety, and welfare is safeguarded.

f. Maintenance

In Mobile Manufactured Home Developments, the developer shall present sufficient information to the Commission to demonstrate that adequate provisions have been made for the sustained maintenance of the development in general and also for the sustained maintenance of the roads and open space.

The intent of this provision of the model ordinance is to insure that the development, once completed, is *maintained.* Communities should establish what documentation is required to satisfy the concern for maintenance. Reference could be made to state statutes regarding MMH liscensing and inspections.

* * * * *

# SUMMARY OF THE SURVEY OF ZONING REGULATIONS IN CONNECTICUT

## Background

The sub-committee of the Mobile Home Task Force concerned with zoning and the development of mobile/manufactured housing conducted a survey of local land use ordinances regulating MMHs in the 169 towns in Connecticut. The purpose of the survey was to document the extent and method by which localities prohibit MMH development. The survey compared density provisions governing MMH developments with similar provisions governing "stick-built" housing. The survey also provided information on perceived problems of MMH units and developments.

## Methodology

Members of the MHTF designed the survey questionnaire and Department of Housing staff mailed it to all 169 localities in Connecticut. Staff then followed up with telephone interviews with local officials. The data collected were processed by computer and results of relevant cross-tabulations were added to the survey data. A copy of the survey and the cover letter which the Mobile Home Task Force sent to each municipality follows the summary of the results of the survey.

## Limitations

Many local officials did not answer some of the questions so that responses in many cases do not represent all 169 towns. However, a large enough sample did respond to all of the questions so that all answers reflect more than a representative sample of Connecticut municipalities.

## Results

A majority of Connecticut towns (67.9 percent) have zoning regulations which prohibit MMH units. One hundred fourteen

towns specifically prohibit MMHs through zoning regulation while 13 others prohibit MMHs through an interpretation of the regulations. In effect, *127 or 75.6 percent of all municipalities exclude MMHs when interpretive prohibitions are counted as well as specific prohibitions.*

Some municipalities (27.4 percent) permit MMH units in parks and even fewer towns (18.3 percent) permit additions to parks. Most towns (83.3 percent) which do permit additions also require special permits for the additions. In the towns which permit additions, most local officials indicate that they have land available.

Some towns (23.7 percent) also permit MMH units on individual lots. Of these towns 71.0 percent require special permits. Also, a majority (66.6 percent) of these towns have land available for MMH units on individual lots. A smaller number of towns (19.4 percent) permit new parks. Most of these towns also require special permits for new parks and over half of these towns have land available. Of the 37 municipalities which permit MMHs in parks, 59.5 percent also permit additions to existing parks and 62.2 percent also permit new mobile home parks.

Communities which permit MMH units permit them, for the most part, (29.1 percent) in residential zones. In addition 13.6 percent permit MMHs in commercial zones and 10.7 percent permit MMHs in industrial zones.

Towns that permit MMHs permit them in various densities ranging from one MMH unit on a one-half acre to over 13 units to the acre. Of these towns, 54.6 percent permit densities of under seven to the acre while 45.4 percent permit over eight units to the acre.

Over half (51.5 percent) of the towns responding have zoning ordinances which *specifically* state that MMH units are prohibited while *48.4 percent use other prohibitive methods to exclude MMH units. Ommission of MMHs in the regulations*

*constitutes the type of prohibition.* Other prohibitions are: floor area requirements, definitions of MMHs as a trailer or recreation vehicle, and provisions found in other parts of the zoning regulations.

Approximately 17.2 percent of the respondents listed perceived problems with MMH units or parks. The most frequent problems listed were complaints that they were substandard to code, health and drainage problems. Other problems listed were that MMH units were unaesthetic, devalued neighbor's property, were incorrectly placed on lots, depreciated in value, were improperly maintained, had unpaved roads, and transient residents.

Approximately 8.3 percent of local officials listed perceived problems with mobile home construction. The most frequent response was that MMH units were substandard and vulnerable to fire and wind. Other construction problems listed related to roof loads, formaldehyde in walls, and depreciating values.

A large proportion of towns, (over 80 percent) exclude MMH parks, prohibit new mobile home parks, and prohibit the expansion of existing mobile home parks.

Of the 112 municipalities which prohibit MMHs through zoning regulations less than half, (46.4 percent) already have this type of housing. Conversely, of the 97 municipalities which have MMHs over half (53.6 percent) prohibit MMHs.

Most of the municipalities (97 percent) that permit new MMH units also permit multi-family housing. But, of the municipalities that permit multi-family housing, only 21.9 percent permit MMHs.

* * * * *

**Summary of Exclusionary Techniques Used**

| | Number | Percent |
|---|---|---|
| Excludes mobile homes by zoning regulations | 114 | 67.9% |
| Exclude by zoning regulations or interpretation of regulations | 127 | 75.6% |
| Exclude mobile homes from mobile home parks | 98 | 72.6% |
| Prohibit expansion of existing mobile home parks | 107 | 81.7% |
| Prohibit new mobile home parks | 104 | 80.6% |

## APPENDIX IV

### C.G.S. §§ 47a-23–41a

### CHAPTER 832

### SUMMARY PROCESS (Footnotes Omitted)

**Sec. 47a-23. (Formerly Sec. 52-532). Notice to quit possession of premises. Form. Service.** (a) When a rental agreement or lease of any land or building or of any apartment in any building, or of any dwelling unit, or of any trailer, or any land upon which a trailer is used or stands, whether in writing or by parol, terminates by lapse of time, or by reason of any expressed stipulation therein, or under the provisions of section 47a-15a, or as a result of a violation of section 47a-11, or where such premises, or any part thereof, is occupied by one who has no right or privilege to occupy such premises, or where one originally had the right or privilege to occupy such premises but such right or privilege has terminated, and the owner or lessor, or his legal representatives, or his attorney-at-law, or in-fact, desires to obtain possession or occupancy of the same at the termination of the rental agreement or lease, if any, or at any subsequent time, he or they shall give notice to the lessee or occupant to quit possession of such land, building, apartment or dwelling unit, at least eight days before the termination of the rental agreement or lease, if any, or before the time specified in the notice for the lessee or occupant to quit possession or occupancy.

(b) The notice shall be in writing substantially in the following form: "I (or we) hereby give you notice that you are to quit possession or occupancy of the (land, building, apartment or dwelling unit, or of any trailer or any land upon which a trailer is used or stands, as the case may be), now occupied by you, on or before the (here insert the date) for the following reason (here insert the reason or reasons for the notice to quit possession or occupancy, also the date and place of signing

notice). A.B.". If the owner or lessor, or his legal representative, attorney-at-law or attorney-in-fact does not know, and in the exercise of reasonable diligence cannot discover, the name of such occupant, the notice may be addressed to "occupant" or "occupants".

(c) A copy of such notice shall be delivered to the lessee or occupant or left at his place of residence or, if the rental agreement or lease concerns commercial property, at the place of the commercial establishment by a proper officer or indifferent person.

**Sec. 47a-23a. Complaint.** (a) If, at athe expiration of the eight days the lessee or occupant neglects or refuses to quit possession or occupancy of the premises, any commissioner of the superior court may issue a writ, summons and complaint which shall be in the form and nature of an ordinary writ, summons and complaint in a civil process, but which shall set forth facts justifying a judgment for immediate possession or occupancy of the premises and make a claim for possession or occupancy of the premises. Such complaint shall be returnable to the superior court. Such complaint may be made returnable six days, inclusive, after service upon the defendant and shall be returned to court at least three days before the return day. Notwithstanding the provisions of section 52-185 no recognizance shall be required of a complainant appearing pro se.

(b) Venue for actions brought pursuant to this chapter shall be the geographical area, established pursuant to section 51-348, where the defendant resides or where the leased premises or trailer are located at the plaintiff's election or, in the case of a defendant corporation or domestic corporation, has an office or place of business. If the defendant is a nonresident, venue shall be the geographical area, established pursuant to section 51-348, where the plaintiff resides or where the land lies at the plaintiff's election.

**Sec. 47a-23b. Service of notice to quit or summons if lessee a nonresident or if whereabouts unknown.** (a) If the lessee or occupant of such land, building, apartment or dwelling unit or of any trailer, or any land upon which a trailer is used or stands, is a nonresident of this state at the time when it is desired to give him notice to quit possession of occupancy of such premises, or at the time of the issuance of the summons, such notice to quit, or such summons, may be served upon the person in charge thereof; or, if no person is in charge of such premises, the notice to quit may be served upon such lessee or occupant in the manner provided by section 52-57 or 52-57a, at least ten days before the time specified in such notice, and such summons may be served in like manner, except that such copy shall be mailed at least six days before the return day thereof.

(b) If such lessee or occupant has gone to parts unknown, the notice to quit may be served upon such lessee or occupant by advertising such notice to quit at least twice in a paper published in the county and having a circulation in the town in which such premises are located. Such notice shall be first advertised at least ten days before the time specified in the notice for the lessee or occupant to quit possession. Such summons may be served in like manner, except that notice of the pendency of such summons shall be first advertised at least six days before the return day thereof.

**Sec. 47a-23c. Prohibition on eviction of certain tenants except for good cause.** (a)(1) Except as provided in subdivision (2) of this subsection, this section applies to any tenant who resides in a building or complex consisting of seven or more separate dwelling units and who is either: (A) Sixty-two years of age or older, or whose spouse, sibling, parent or grandparent is sixty-two years of age or older and permanently resides with that tenant; (B) blind, as defined in section 1-1f; or (C) physically disabled, as defined in section 1-1f, but only if such disability can be expected to result in death or to last for a continuous period of at least twelve months.

(2) With respect to tenants in common interest communities, this section applies only to a conversion tenant, as defined in subsection (3) of section 47-283, who (A) is described in subdivision (1) of this subsection, or (B) during a transition period, as defined in subsection (4) of section 47-283, is residing in a conversion condominium created after May 6, 1980, in any other conversion common interest community created after December 31, 1982, or (C) is otherwise protected as a conversion tenant by public act 80-370.

(3) As used in this section, "complex" means two or more buildings on the same or contiguous parcels of real property under the same ownership.

(b)(1) No landlord may bring an action of summary process or other action to dispossess a tenant described in subsection (a) of this section except for one or more of the following reasons: (A) Nonpayment of rent; (B) refusal to agree to a fair and equitable rent increase, as defined in subsection (c) of this section; (C) material noncompliance with section 47a-11 which materially affects the health and safety of the other tenants or which materially affects the physical condition of the premises; (D) voiding of the rental agreement pursuant to section 47a-31, or material noncompliance with the rental agreement; (E) material noncompliance with the rules and regulations of the landlord adopted in accordance with section 47a-9; (F) permanent removal by the landlord of the dwelling unit of such tenant from the housing market; or (G) bona fide intention by the landlord to use such dwelling unit as his principal residence.

(2) The ground stated in subparagraph (G) of subdivision (1) of this subsection is not available to the owner of a dwelling unit in a common interest community occupied by a conversion tenant.

(3) A tenant may not be dispossessed for a reason described in subparagraph (B), (F) or (G) of subdivision (1) of this subsection during the term of any existing rental agreement.

(c)(1) The rent of a tenant protected by this section may be increased only to the extent that such increase is fair and equitable, based on the criteria set forth in section 7-148c.

(2) Any such tenant aggrieved by a rent increase or proposed rent increase may file a complaint with the fair rent commission, if any, for the town, city or borough where his dwelling unit is located; or, if no such fair rent commission exists, may bring an action in the superior court to contest the increase. In any such court proceeding, the court shall determine whether the rent increase is fair and equitable, based on the criteria set forth in section 7-148c.

(d) A landlord, to determine whether a tenant is a protected tenant, may request proof of such protected status. On such request, any tenant claiming protection shall provide proof of the protected status within thirty days. The proof shall include a statement of a physician in the case of alleged blindness or other physical disability.

**Sec. 47a-23d. Report to general assembly.** Obsolete.

**Sec. 47a-24. (Formerly Sec. 52-532a). Action by cooperative housing corporation.** As used in this chapter, (1) "lessee or occupant" includes a member or shareholder of a cooperative housing corporation who occupies a dwelling unit in such corporation's premises pursuant to an agreement of occupancy, whether or not it is designated as a lease or rental agreement, which agreement provides that, for breach by the member or shareholder of any provision of such agreement, the corporation shall have the legal remedies available to a landlord for breach by a tenant of a provision of a lease or rental agreement; and (2) "owner or lessor" includes any such cooperative housing corporation.

**Sec. 47a-25. (Formerly Sec. 52-533). Waiver of notice to quit.** When, in any written lease of any land, building, apartment or dwelling unit, notice to quit possession has been expressly waived by the lessee in the event such lease terminates by lapse of time, the eight days' notice prescribed in sections and 47a-23 and 47a-23a shall not be necessary; and complaint and summons may issue in the same manner as if such notice to quit had been previously given.

**Sec. 47a-26. (Formerly Sec. 52-534). Failure to appear. Judgment.** If the defendant does not appear within two days after the return day and a motion for judgment for failure to appear and an endorsed copy of the notice to quit is filed with the clerk, the court shall forthwith enter judgment that the complainant recover possession or occupancy of the premises with his costs, and execution shall issue subject to the provisions of sections 47a-35 to 47a-41, inclusive.

**Sec. 47a-26a. Failure to plead. Judgment.** If the defendant appears but does not plead within three days after the return day, the complainant may file a motion for judgment for failure to plead, served upon the defendant in the manner provided in the rules adopted by the judges of the superior court for the service of pleadings. If the defendant fails to plead within three days after receipt of such motion by the clerk, the court shall forthwith enter judgment that the complainant recover possession or occupancy with his costs.

**Sec. 47a-26b. Order for payments for use and occupancy. Hearing. Answer or judgment.** (a) If the defendant appears, the court shall, upon motion and without hearing, unless the defendant files an objection within five days of the filing of the motion, order the defendant to deposit with the court within ten days of the issuance of the order payments for use and occupancy in an amount equal to the last agreed-upon rent during the pendency of such action accruing from the date

of such order. Notice of such order shall be given on a form prescribed by the judicial department. Such form shall state in clear and simple language and in readable format (1) the amount to be paid, (2) the date by which such payment must be received by the clerk, and (3) the consequences of failure to make payment as ordered, and shall contain space to claim an objection. The filing by the plaintiff of a motion for use and occupancy payments shall not suspend the time limits for pleading under section 47a-26a.

(b) If the defendant files an objection to the motion, a hearing on the objection shall be held not more than seven days after such objection is filed, after which the court shall order the defendant to deposit with the court payments for use and occupancy in an amount equal to the fair rental value of the premises during the pendency of such action accruing from the date of such order. The last agreed-upon rent shall be prima facie evidence of the fair rental value of the premises. The party claiming a different amount shall have the burden of proving that the last agreed-upon rent is not the fair rental value. Such order shall permit the payment of such amounts in monthly instalments, as such amounts become due. Nothing in this subsection shall preclude either party from subsequently moving to modify the amount of the payment order for cause shown.

(c) If the defendant fails to make such payments as ordered, the clerk shall, immediately and without the filing of a motion, order the defendant to file his answer and, if the defendant fails to do so within four days of the mailing of such order, judgment shall forthwith be entered for the plaintiff. If the defendant files an answer within such four-day period, the clerk shall set such matter down for hearing not less than three nor more than seven days after such answer and reply, if any, are filed.

**Sec. 47a-26c. Advancement of pleadings.** All pleadings, including motions, shall advance at least one step within each successive period of three days from the preceding pleading or motion.

**Sec. 47a-26d. Trial. Finding. Judgment.** If, on the trial of a summary process complaint it is found that the defendant is the lessee or the complainant and holds over after the termination of the lease or rental agreement or, if there was no lease or rental agreement, that the defendant is the occupant of such premises and has no right or privilege to occupy the same and that notice to quit has been given as provided in this chapter, yet that the defendant holds possession or occupancy after the expiration of the time specified in such notice to quit, and the defendant does not show a title in himself which accrued after the giving of the lease or rental agreement, if any, or if the defendant does not show a title in himself existing at the time the notice to quit possession or occupancy was served upon him, the court shall forthwith enter judgment that the complainant recover possession or occupancy of the premises with his costs, and execution shall issue accordingly subject to the provisions of sections 47a-35 to 47a-41, inclusive.

**Sec. 47a-26e. Order of payments on appeal.** If an order of payments is in effect on the date of judgment in the trial court and an appeal is taken by the defendant, the order shall remain in effect and compliance with the order shall constitute satisfactory compliance with the bond requirement of section 47a-35a.

**Sec. 47a-26f. Hearing to distribute payments.** After entry of final judgment, the court shall hold a hearing to determine the amount due each party from the accrued payments for such use and occupancy and order distribution in accordance with its determination. Such determination shall be based upon the respective claims of the parties arising during the pendency of the proceedings after the date of the order for payments and shall be conclusive of such claims only to the extent of the total amount distributed.

**Sec. 47a-26g. Appeal.** Appeal shall be allowed from any judgment rendered in any summary process action in the manner provided in sections 47a-35 to 47a-35b, inclusive, and sections 51-197c to 51-197f, inclusive.

**Sec. 47a-27. (Formerly Sec. 52-535). Summary process by assignee and mortgagee.** The remedy provided by this chapter in favor of lessors shall extend to all persons deriving title from the lessor or lessee of any land, building, apartment or dwelling unit and to the mortgagee of any land, building, apartment or dwelling unit, after his title has become absolute by foreclosure, and to all persons deriving title from him, or from the mortgagor. On a complaint by the mortgagee or his assigns, it shall be sufficient for him to prove the mortgage and his title thereunder, the foreclosure and the failure to redeem, that notice to quit at or after the expiration of the time limited for redemption has been served on the defendant and that he is the mortgagor, or one holding under him, and holds possession after the expiration of the term specified in such notice, unless the defendant can show a superior title in himself.

**Sec. 47a-28. (Formerly Sec. 52-536). Action by selectmen.** An action of summary process may be maintained by the selectmen of a town in its name to gain possession or occupancy of any land or buildings belonging to such town, which is held under a lease or by one in possession or occupancy thereof without right, title or privilege.

**Sec. 47a-29. (Formerly Sec. 52-537). Action by reversion or remainderman.** When any lessee occupies any land, building, apartment or dwelling unit under a lease or rental agreement from a tenant for life, any person entitled to the reversion or remainder may, upon the death of such tenant for life, proceed against such lessee by summary process, in the manner prescribed in this chapter. All proceedings

commenced by such tenant for life for the recovery of such leased premises may, upon his death, be prosecuted in the name of the reversioner or remainderman, in the same manner as the lessor might have prosecuted the same if living.

**Sec. 47a-30. (Formerly Sec. 52-538). Eviction of former farm employee.** (a) When any farm employee occupies a dwelling, dwelling unit or tenement furnished by his employer and when his employment is terminated by himself or his employer, or such employee fails to report for employment, and fails to vacate the premises in which he is residing, he shall be given not less than five days' notice to quit possession of such premises on the form prescribed by section 47a-23.

(b) If he fails, after the expiration of the period specified in such notice, to vacate such premises, an action of summary process may be brought against such employee.

(c) At the summary process hearing, the court may take into account the needs of the employee and enter a judgment granting such stay of execution as is reasonable and fair to the parties but, notwithstanding the provisions of section 47a-36, in no case more than fifteen days. The provisions of sections 47a-37 to 47a-39, inclusive, shall not apply to an action of summary process under the provisions of this section.

**Sec. 47a-31. (Formerly Sec. 52-539). Illegal use of premises voids lease.** When the lessee or tenant of any house, room, tenement or dwelling unit is convicted of keeping a house of ill-fame therein, resorted to for the purpose of prostitution or lewdness, or of a violation therein of any law against gaming, the lease, contract or rental agreement for letting such house, room, tenement or dwelling unit shall thereupon be void; and the lessor may recover possession of the premises in the manner prescribed in this chapter, but notice to quit possession shall not be required.

**Sec. 47a-32. (Formerly Sec. 52-540). Nuisance defined.** In any action of summary process based upon nuisance, that term shall be taken to include, but shall not be limited to, any conduct which interferes substantially with the comfort or safety of other tenants or occupants of the same or adjacent buildings or structures.

**Sec. 47a-33. (Formerly Sec. 52-540a). Defense that action is retaliatory.** In any action for summary process under this chapter or section 21-80 it shall be an affirmative defense that the plaintiff brought such action solely because the defendant attempted to remedy, by lawful means, including contacting officials of the state or of any town, city, borough or public agency or filing a complaint with a fair rent commission, any condition constituting a violation of any of the provisions of chapter 368o, or of chapter 412, or of any other state statute or regulation or of the housing or health ordinances of the municipality wherein the premises which are the subject of the complaint lie. The obligation on the part of the defendant to pay rent or the reasonable value of the use and occupancy of the premises which are the subject of any such action shall not be abrogated or diminished by any provision of this section.

**Sec. 47a-34. (Formerly Sec. 52-541). Other legal remedies not affected.** All persons claiming title to premises concerning which any proceedings under this chapter have been had shall be entitled to any other legal remedy in the same manner as if such proceedings had not been had.

**Sec. 47a-35. (Formerly Sec. 52-542). Stay of execution. Time to appeal.** Execution shall be stayed for five days from the date judgment has been rendered, provided any Sunday or legal holiday intervening shall be excluded in computing such five days, except that in an action for nonpayment of rent, if within five days of the date judgment is rendered the

defendant deposits with the clerk of the court the full arrearage then the defendant may apply for a stay of execution in accordance with section 47a-37. Notwithstanding the provisions of said section no such stay may exceed three months in the aggregate. The clerk shall distribute such arrearage to the landlord in accordance with an order of the court. An appeal shall not be taken except within such period. If an appeal is taken within such period, execution shall be stayed until the final determination of the cause, unless it appears to the judge who tried the case that the appeal was taken solely for the purpose of delay or unless the defendant fails to give bond, as provided in section 47a-35a. If execution has not been stayed, as provided in this section, execution may then issue, except as otherwise provided in sections 47a-36 to 47a-41, inclusive.

**Sec. 47a-35a. Bond on appeal. Rent to be paid into court.** (a) When any appeal is taken by the defendant occupying a dwelling unit as defined in section 47a-1 in an action of summary process, he shall, within the period allowed for taking such appeal, give a bond with surety to the adverse party to guarantee payment for all rents that may accrue during the pendency of such appeal, or, where no lease had existed, for the reasonable value for such use and occupancy that may so accrue; provided the court shall upon motion by the defendant and after hearing thereon order the defendant to deposit with the court payments for the reasonable fair rental value of the use and occupancy of the premises during the pendency of such appeal accruing from the date of such order. Such order shall permit the payment of such amount in monthly instalments, as it becomes due, and compliance with such order shall be a substitute for any bond required by this section.

(b) In any other appeal the court on its own motion or on motion of the parties, may fix a sufficient bond with surety to the adverse party in such amount as it may determine.

**Sec. 47a-35b. Distribution of payments after appeal.** Upon final disposition of the appeal, the trial court shall hold a hearing to determine the amount due each party from the accrued payments for use and occupancy and order distribution in accordance with such determination. Such determination shall be based upon the respective claims of the parties arising during the pendency of the proceedings after the date of the order for payments and shall be conclusive of those claims only to the extent of the total amount distributed.

**Sec. 47a-36. (Formerly Sec. 52-543). Stay of execution for twenty days. Exceptions.** (a) In any action of summary process to recover possession of any land, any building, any apartment in any building, any dwelling unit or any trailer, used or occupied for dwelling purposes, or any land upon which a trailer is used, stands or is occupied for dwelling purposes, where judgment has been rendered for the plaintiff under the provisions of section 47a-26, 47a-26a, 47a-26b or 47a-26d, for any reason other than nonpayment of rent or nuisance committed or permitted by the defendant, or the use of or permitting the use of the premises for an immoral or illegal purpose, execution shall not issue until twenty days from the date of such judgment, notwithstanding the provisions of sections 47a-35 and 47a-35a.

(b) Sections 47a-36 to 47a-41, inclusive, shall not apply to (1) housing accommodations situated on a farm and occupied by a tenant who is engaged for a substantial portion of his time in farming operations thereon, (2) dwelling space occupied by domestic servants, caretakers, managers or other employees, to whom the space is provided as part or all of their compensation and who are employed for the purpose of rendering services in connection with the premises of which the dwelling space is a part, (3) land, housing accommodations or a trailer, used or occupied for dwelling purposes, or any land upon which a trailer is used, stands or is occupied for dwelling purposes located in a resort community and customarily rented or occupied on a seasonal basis, or (4) any room or rooms in a hotel, lodging house or rooming house.

**Sec. 47a-37. (Formerly Sec. 52-544). Application for stay of execution.** Within a period of twenty days after a judgment as described in section 47a-36, any defendant against whom such judgment has been rendered may file an application in triplicate with the clerk of the superior court in which the judgment was rendered, requesting a stay of execution and setting forth the reasons therefor. The court rendering the judgment shall inform each defendant in such case of his right to file an application for a stay of execution and, upon request, shall furnish him with the necessary form. Upon the filing of such an application, execution of the judgment rendered shall be further stayed until a decision is rendered on the application. The clerk of the court rendering the judgment shall forthwith hand or send one copy of the application to the adverse party or his attorney, shall note on the original and each copy the date of filing and the date and method of transmittal of the copy to the adverse party or his attorney, and shall file the original and one copy of the application with the complete court records, papers and exhibits in connection with such proceedings.

**Sec. 47a-38. (Formerly Sec. 52-545). Hearing on application for stay of execution.** Upon the receipt of any application for stay of execution, the clerk of the superior court shall include the matter on the short calendar for a hearing on the application, and shall give each party or his attorney at least three days' notice of the time and place of the hearing.

**Sec. 47a-39. (Formerly Sec. 52-546). Court may grant stay of execution.** Upon the hearing on such application in the superior court the judgment of the trial court shall stand, but upon such hearing if it appears that the premises, judgment for possession or occupancy of which has been rendered, are used for dwelling purposes and come within the classification of premises as set forth in section 47a-36; that the applicant cannot secure suitable premises for himself and his family elsewhere within the city or town or in a city or town adjacent

thereto in a neighborhood reasonably comparable to that in which the premises occupied by him are situated; that he has used due diligence and reasonable effort to secure other premises; that his application is made in good faith, and that he will abide by and comply with such terms and provisions as the court may prescribe, the court may grant a stay of execution for a period or for periods in the aggregate not exceeding six months from the date of the judgment in the summary process action upon such conditions and terms as appear fair and equitable; provided in the case of an applicant residing in a dwelling unit which has been declared a conversion condominium, at the end of such six-month period the court may extend such stay of execution under the same or different conditions and terms for an additional period not exceeding six months taking into consideration the age of the applicant, the size of the applicant's family, the length of time of such applicant's tenancy and the availability of suitable alternative housing. Such extended stay may be reviewed every two months. The court shall consider all the circumstances of the case, the equities involved and whether any undue hardship would result to either party. Such conditions and terms may include the requirement that the applicant shall pay to the plaintiff in the summary process action such amount in such instalments from time to time and in such manner as the court may direct, for the use and occupancy of the premises for such period of the stay, at the rate to which he was liable as rent for the month immediately prior to the expiration of his term or tenancy, if any, and any assessment for current common expenses not already included in the rent as provided in subsection (b) of section 47-76, if any, or such sum as may be determined by the court to be reasonable for such use and occupancy. Such payment shall also include all rent unpaid prior to the period of such stay.

**Sec. 47a-40. (Formerly Sec. 52-547). No entry fee, judgment fee or costs on application or hearing.** No entry fee and no judgment fee shall be required and no costs shall be taxed in favor of either party in connection with an application for a stay of execution and the hearing thereon.

**Sec. 47a-41. (Formerly Sec. 52-548). Waiver of tenant's rights to be void.** Any provision of a lease or rental agreement whereby a lessee or tenant waives the benefits of sections 47a-36 to 47a-40, inclusive, or any provision of any lease or rental agreement which limits the rights of any lessee or tenant under the provisions of said sections, is against public policy and void.

**Sec. 47a-41a. Execution void after six months.** An execution to enforce a summary process judgment shall not be issued after the expiration of six months from the date such judgment was entered, except that any period during which execution was stayed shall be excluded from the computation of the period of limitation.

## APPENDIX V

### C.G.S. § 8-2

### CHAPTER 124

### ZONING (Footnotes Omitted)

Sec. 8-2. **Regulations.** The zoning commission of each city, town or borough is authorized to regulate, within the limits of such municipality, the height, number of stories and size of buildings and other structures; the percentage of the area of the lot that may be occupied; the size of yards, courts and other open spaces; the density of population and the location and use of buildings, structures and land for trade, industry, residence or other purposes, and the height, size and location of advertising signs and billboards. Such zoning commission may divide the municipality into districts of such number, shape and area as may be best suited to carry out the purposes of this chapter; and, within such districts, it may regulate the erection, construction, reconstruction, alteration or use of buildings or structures and the use of land. All such regulations shall be uniform for each class or kind of buildings, structures or use of land throughout each district, but the regulations in one district may differ from those in another district, and may provide that certain classes or kinds of buildings, structures or uses of land are permitted only after obtaining a special permit or special exception from a zoning commission, planning commission, combined planning and zoning commission or zoning board of appeals, whichever commission or board the regulations may, notwithstanding any special act to the contrary, designate, subject to standards set forth in the regulations and to conditions necessary to protect the public health, safety, convenience and property values. Such regulations shall be made in accordance with a comprehensive plan and shall be designed to lessen congestion in the streets; to secure safety from fire, panic, flood and other dangers; to promote health and the general welfare; to provide

adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population and to facilitate the adequate provision for transportation, water, sewerage, schools, parks and other public requirements. Such regulations shall be made with reasonable consideration as to the character of the district and its peculiar suitability for particular uses and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such municipality. Such regulations shall also encourage the development of housing opportunities for all citizens of the municipality consistent with soil types, terrain and infrastructure capacity. Zoning regulations may be made with reasonable consideration for the protection of historic factors and shall be made with reasonable consideration for the protection of existing and potential public surface and ground drinking water supplies. On and after July 1, 1985, the regulations shall provide that proper provision be made for soil erosion and sediment control pursuant to section 22a-329. Such regulations may also encourage energy-efficient patterns of development, the use of solar and other renewable forms of energy, and energy conservation. The regulations may also provide for incentives for developers who use passive solar energy techniques, as defined in subsection (b) of section 8-25, in planning a residential subdivision development. The incentives may include, but not be limited to, cluster development, higher density development and performance standards for roads, sidewalks and underground facilities in the subdivision. Such regulations shall not prohibit the continuance of any nonconforming use, building or structure existing at the time of the adoption of such regulations. Any city, town or borough which adopts the provisions of this chapter may, by vote of its legislative body, exempt municipal property from the regulations prescribed by the zoning commission of such city, town or borough; but unless it is so voted municipal property shall be subject to such regulations.

## APPENDIX VI

### C.G.S. § 47a-20

### CHAPTER 831

### LANDLORD AND TENANT (Footnotes Omitted)

**Sec. 47a-20. (Formerly Sec. 19-375a). Retaliatory action by landlord prohibited.** A landlord shall not maintain an action or proceeding against a tenant to recover possession of a dwelling unit, demand in increase in rent from the tenant, or decrease the services to which the tenant has been entitled within six months after: (1) The tenant has in good faith attempted to remedy by any lawful means, including contacting officials of the state or of any town, city or borough or public agency or filing a complaint with a fair rent commission, any condition constituting a violation of any provisions of chapter 368o, or of chapter 412, or of any other state statute or regulation, or of the housing and health ordinances of the municipality wherein the premises which are the subject of the complaint lie; (2) any municipal agency or official has filed a notice, complaint or order regarding such a violation; (3) the tenant has in good faith requested the landlord to make repairs; (4) the tenant has in good faith instituted an action under subsections (a) to (i), inclusive, of section 47a-14h; or (5) the tenant has organized or become a member of a tenants' union.

## APPENDIX VII

### C.G.S. § 47a-20a

### CHAPTER 831

### LANDLORD AND TENANT (Footnotes Omitted)

**Sec. 47a-20a. Actions deemed not retaliatory.** (a) Notwithstanding the provisions of section 47a-20, the landlord may maintain an action to recover possession of the dwelling unit if: (1) The tenant is using the dwelling unit for an illegal purpose or for a purpose which is in violation of the rental agreement or for nonpayment of rent; (2) the landlord seeks in good faith to recover possession of the dwelling unit for immediate use as his own abode; (3) the condition complained of was caused by the wilful actions of the tenant or another person in his household or a person on the premises with his consent; or (4) the landlord seeks to recover possession on the basis of a notice to terminate a periodic tenancy, which notice was given to the tenant before the tenant's complaint.

(b) Notwithstanding the provisions of section 47a-20, a landlord may increase the rent of a tenant if: (1) The condition complained of was caused by the lack of due care by the tenant or another person of his household or a person on the premises with his consent or (2) the landlord has become liable for a substantial increase in property taxes, or a substantial increase in other maintenance or operating costs not associated with his complying with the complaint, not less than four months before the demand for an increase in rent, and the increase in rent does not exceed the prorated portion of the net increase in taxes or costs.

(c) Nothing in this section or section 47a-20 shall be construed to in any way limit the defense provided in section 47a-33.

## APPENDIX VIII

### C.G.S. § 21-82(6)

### CHAPTER 412

### MOBILE MANUFACTURED HOMES AND MOBILE MANUFACTURED HOME PARKS, PARK OWNERS AND RESIDENTS (Footnotes Omitted)

**Sec. 21-82. Rental agreements; required provisions.** Every rental agreement shall contain the following provisions:

(a) At all times during the tenancy the owner shall:

(1) Maintain the premises and regrade them when necessary to prevent the accumulation of stagnant water and to prevent the detrimental effects of moving water;

(2) Maintain the ground at such a level that the mobile manufactured home will not tilt from its original position;

(3) Keep each mobile manufactured home space or lot marked in such a way that each resident will be certain of his area of responsibility;

(4) Keep any exterior area of the park not the responsibility of each resident free from any species of weed or plant growth which are noxious or detrimental to the health of the residents;

(5) Be responsible for the extermination of any insect, rodent, vermin or other pest dangerous to the health of the residents whenever infestation exists in the area of the park not the responsibility of the resident or in the area for which the resident is responsible including the mobile manufactured home if such infestation is not the fault of the resident and particularly if such infestation existed prior to the occupancy of the resident claiming relief;

(6) Maintain all mobile manufactured homes rented by the owner in a condition which is structurally sound and capable of withstanding adverse effects of weather conditions;

## APPENDIX IX

### C.G.S. § 21-83a

### CHAPTER 412

### MOBILE MANUFACTURED HOMES AND MOBILE MANUFACTURED HOME PARKS. PARK OWNERS AND RESIDENTS. (Footnotes Omitted)

**Sec. 21-83a. Applicability of provisions re rental agreements.** The provisions of sections 21-82 and 21-83 shall apply to all tenancies in mobile manufactured home parks.

## APPENDIX X

### C.G.S. § 21-79

### CHAPTER 412

### MOBILE MANUFACTURED HOMES AND MOBILE MANUFACTURED HOME PARKS. PARK OWNERS AND RESIDENTS. (Footnotes Omitted)

**Sec. 21-79. Owner prohibited from restricting resident's right to sell.** (a) No owner or operator of a mobile manufactured home park shall require a resident who owns a mobile manufactured home which is safe, sanitary and in conformance with aesthetic standards to remove the home from the development at the time such mobile manufactured home is sold or a mortgage on such a home is foreclosed provided that the purchaser or foreclosing mortgagee shall assume and be bound by the rental agreement of the foreclosed mortgagor and shall be bound by the rules and regulations of the park.

(b) A mobile manufactured home shall be presumed to be safe and sanitary if it is established that the mobile manufactured home was constructed in accordance with any nationally recognized building or construction code or

standard. Failure to meet any such standard or the provisions of any such code shall not automatically raise a presumption that the mobile manufactured home is unsafe or unsanitary. Such failure shall not be used as a reason for withholding approval of an on-site sale unless such failure renders the mobile manufactured home unsafe or unsanitary.

(c) The owner of a mobile manufactured home park shall bear the burden of showing that a mobile manufactured home is unsafe, unsanitary, or fails to meet the aesthetic standards of the development. No aesthetic standard concerning those physical characteristics such as size, original color or original building materials, which cannot be changed without undue financial hardship to the resident, shall be applied against a mobile home.

(d) Any purchaser of a mobile manufactured home sold by a resident may become a resident of the mobile manufactured home park provided he meets the entry requirements for said park and such requirements are equally applied by the owner to all purchasers and prospective residents and the owner approves such entry. Such approval may not be withheld except for good cause. For the purposes of this section good cause means a reasonable cause for the owner to believe (1) that such purchaser intends to utilize the purchased mobile manufactured home for an illegal or immoral purpose or for any purpose that would disturb the quiet enjoyment of the other residents of the park or (2) that the purchaser is or will be financially unable to pay the rent for the space or lot upon which the purchased mobile manufactured home is located. If the owner denies approval to a purchaser, he shall, in writing, state any reason for such disapproval. Such statement shall be delivered to the resident and the purchaser or prospective resident within ten days after the owner receives the completed application of the purchaser or prospective resident. Failure to deliver such notification within ten days shall be deemed to be approval.

(e) Any resident wishing to sell his or her home shall request a written statement of the owner's intentions regarding the condition of the home. Within twenty days after receipt of such a request, the owner shall approve the home's condition for resale or deliver a written statement to the resident specifying the reasons why the home is not safe, sanitary, or in conformance with aesthetic standards. Failure of the owner to respond within twenty days shall be deemed to be an approval of the home's condition for resale. If the resident disputes the owner's response, he may seek a declaratory ruling from the department of consumer protection. The resident may attempt to correct defects identified by the owner and may again request the owner's approval of the home's condition for resale. If the resident again disputes the owner's response, he may once again seek a declaratory ruling from the department. An owner's statement of approval shall remain in force for not more than six months. No owner shall exact a commission or fee with respect to the price realized by the seller, unless he has acted as agent for the seller in a sale pursuant to a written contract, or charge a rent for the mobile manufactured home space or lot upon which the purchased mobile manufactured home is located greater than the prevailing rent for any other space or lot located in the park.

## APPENDIX XI

### C.G.S. § 21-64(5)

### CHAPTER 412

### MOBILE MANUFACTURED HOMES AND MOBILE MANUFACTURED HOME PARKS. PARK OWNERS AND RESIDENTS. (Footnotes Omitted)

**Sec. 21-64. Definitions.** As used in this chapter:

(1) "Mobile manufactured home" means a detached residential unit having three-dimensional components which are intrinsically mobile with or without a wheeled chassis or a detached residential unit built on or after June 15, 1976, in accordance with federal manufactured home construction and safety standards, and, in either case, containing sleeping accommodations, a flush toilet, tub or shower bath, kitchen facilities and plumbing and electrical connections for attachment to outside systems, and designed for long-term occupancy and to be placed on rigid supports at the site where it is to be occupied as a residence, complete and ready for occupancy, except for minor and incidental unpacking and assembly operations and connection to utility systems;

(2) "Mobile manufactured home park" or "park" means a plot of ground upon which two or more mobile manufactured homes, occupied for residential purposes are located;

(3) "Mobile manufactured home space or lot" means a plot of ground within a mobile manufactured home park designed for the accommodation of one mobile manufactured home;

(4) "Licensee" means any person licensed to operate and maintain a mobile manufactured home park under the provisions of this chapter;

(5) "Resident" means a person who owns, or rents and occupies, a mobile manufactured home in a mobile manufactured home park;

## APPENDIX XII

### C.G.S. § 21-80

### CHAPTER 412

### MOBILE MANUFACTURED HOMES AND MOBILE MANUFACTURED HOME PARKS. PARK OWNERS AND RESIDENTS. (Footnotes Omitted)

**Sec. 21-80. Grounds for summary process or termination of rental agreement. Procedure for summary process action or termination of rental agreement. Rent increases.** (a) An action for summary process may be maintained by the owner of a mobile manufactured home park against a mobile manufactured home resident, who rents his mobile manufactured home from such owner, for the following reasons which shall be in addition to other reasons allowed under chapter 832 and except as otherwise specified, proceedings under this section shall be as prescribed in said chapter 832:

(1) A conviction of the resident of a violation of a federal or state law or local ordinance which the court finds to be detrimental to the health, safety and welfare of other residents in the park but no notice to quit possession shall be required;

(2) The continued violation of any reasonable rule established by the owner, provided a copy of such rule has been delivered by the owner to the resident prior to entering into a rental agreement and a copy of such rule has been posted in a conspicuous place in the park and, provided further the resident receives written notice of the specific rule or rules being violated at least thirty days before the time specified in the notice for the resident to quit possession of the mobile manufactured home or occupancy of the space or lot; or

(3) A change in use of the land on which such mobile manufactured home is located, provided all the residents

affected are given written notice at least three hundred sixty-five days before the time specified in the notice for the resident to quit possession of the mobile manufactured home or occupancy of the lot.

(b)(1) Notwithstanding the provisions of section 47a-23, an owner may terminate a rental agreement or maintain a summary process action against a resident who owns his mobile manufactured home only for one or more of the following reasons:

(A) Nonpayment of rent, utility charges or reasonable incidental services charge;

(B) Material noncompliance by the resident with any statute or regulation materially affecting the health and safety of other residents or materially affecting the physical condition of the park;

(C) Material noncompliance by the resident with the rental agreement or with rules or regulations adopted under section 21-70;

(D) Failure by the resident to agree to a proposed rent increase, provided the owner has complied with all provisions of subdivision (5) of this subsection; or

(E) A change in the use of the land on which such mobile manufactured home is located, provided all of the affected residents receive written notice at least three hundred sixty-five days before the time specified in the notice for the resident to quit possession of the mobile manufactured home or occupancy of the lot.

(2) An owner may not maintain a summary process action under subparagraph (B), (C) or (D) of subdivision (1) of this subsection prior to delivering a written notice to the resident specifying the acts or omissions constituting the action or inaction complained of and allowing the resident twenty-one days in which to remedy such complaint.

(3) Notwithstanding the provisions of section 47a-23, termination of any tenancy in a mobile manufactured home park shall be effective only if made in the following manner:

(A) By the resident giving at least thirty days' notice to the owner;

(B) By the owner giving the resident at least sixty days' written notice, which shall state the reason or reasons for such termination, except that, when termination is based upon subparagraph (A) of subdivision (1) of this subsection, the owner need give the resident only thirty days' written notice, which notice shall state the total arrearage due provided, the owner shall not maintain or proceed with a summary process action against a resident who tenders the total arrearage due to the owner within such thirty days and who has not so tendered an arrearage under this subparagraph during the preceding twelve months.

(4) Except as otherwise specified, proceedings under this section shall be as prescribed by chapter 832.

(5) Nothing in this subsection shall prohibit an owner from increasing the rent at the termination of the rental agreement if (A) the owner delivers a written notice of the proposed rent increase to the resident at least thirty days before the start of a new rental agreement; (B) the proposed rent is consistent with rents for comparable lots in the same park; and (C) the rent is not increased in order to defeat the purpose of this subsection.

(c) Notwithstanding the provisions of sections 47a-35 and 47a-36, if judgment is entered in a summary process action against a mobile manufactured home owner and resident based upon subparagraph (D) of subdivision (1) of subsection (b) of this section, execution shall not issue until six months from the date of such judgment. The court shall condition such

stay of execution upon a requirement that the mobile manufactured home owner and resident make payments to the plaintiff in the summary process action in such instalments as the court may direct for the use and occupancy of the premises during the period of such stay at the rate for which such mobile manufactured home owner and resident was most recently liable as rent or in such greater sum as is reasonable in such instalments as the court may direct.